

AMENDED IN SENATE APRIL 17, 2006

SENATE BILL

No. 1759

Introduced by Senator Ashburn

February 24, 2006

~~An act relating to health facilities.~~ *An act to amend Sections 1265.5, 1337.2, 1337.6, 1338.5, 1416.26, 1522, 1568.09, 1569.17, 1575.7, 1596.871, 1728.1, 1736.1, 1736.2, 1736.6, 1743.9 of, and add Chapter 2.6 (commencing with Section 1499) to Division 2 of, the Health and Safety Code, relating to health and care facilities.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1759, as amended, Ashburn. Health *and care* facilities: background checks.

Under existing law, the State Department of Health Services licenses and regulates health facilities, including intermediate care facilities. A violation of these provisions is a crime.

Existing law requires the department to secure a criminal record from an appropriate law enforcement agency prior to the initial licensure or renewal of a license of any person or persons to operate or manage an intermediate care facility/developmentally disabled-habilitative, intermediate care facility/developmentally disabled nursing, or intermediate care facility/developmentally disabled, other than an intermediate care facility/developmentally disabled operated by the state, to determine whether the applicant, facility administrator or manager, any direct care staff, or any other adult living in the same location has ever been convicted of a crime other than a minor traffic violation.

This bill would, instead, require the criminal record clearance be conducted by the submission of fingerprint images to the Department

of Justice, would specify that the criminal record shall be complete when the State Department of Health Services has obtained the criminal record clearance, and would prohibit direct contact by the applicant with residents until completion of the clearance.

This bill would also prohibit the applicant from applying for a criminal record clearance if the person subject to the criminal record clearance has been disqualified for engaging in the activity for which clearance is required until 2 years after notification of denial of the criminal record clearance.

Existing law establishes requirements, administered by the State Department of Health Services, for certification as a certified nurse assistant.

This bill would, in addition, require that a certified nurse assistant applicant not have had an application for certification denied or a certificate revoked, as specified in the preceding 2 years or have had a criminal record clearance denied in the preceding 2 years.

Existing law requires that a criminal record clearance shall be conducted for all nurse assistants by the submission of fingerprint cards to the department for processing at the Department of Justice, and requires completion of the record clearance prior to issuance or renewal of a certificate.

This bill would, instead, require the criminal record clearance be conducted by the submission of fingerprint images to the Department of Justice, would specify that the criminal record shall be complete when the State Department of Health Services has obtained the criminal record clearance, and would prohibit direct contact by the applicant with residents until completion of the clearance.

This bill would impose an additional requirement for licensing or certification under specified health care provider licensing programs administered by the State Department of Health Services by requiring that any person or entity licensed under one of the applicable programs disclose, under penalty of perjury, any revocation or other disciplinary action taken or proposed against a license, certificate, registration, or other permission to engage in a profession, vocation, or occupation to operate a facility or institution. By requiring the disclosure of that information under penalty of perjury, this bill would create a crime, and would result in a state-mandated local program.

Existing law establishes requirements, administered by the State Department of Health Services, for applicants for a nursing home facility administrator license, including the requirement that the

applicant shall, as part of the application process, submit to the department 2 sets of completed fingerprint cards for a criminal record clearance through the Department of Justice.

This bill would, instead, require the applicant to submit electronic fingerprint images to the Department of Justice for a criminal clearance, would prohibit the applicant from direct contact with patients until completion of the clearance, and would prohibit application for a criminal record clearance if the person subject to the criminal record clearance has been disqualified from engaging in the activity for which clearance is required until 2 years after notification of denial of the criminal record clearance.

Existing law, the California Adult Day Health Care Act, requires that the State Department of Health Services, prior to issuing a new license under that act, conduct certain procedures in securing a criminal record clearance with respect to the administrator, program director, and fiscal officer of a proposed adult day health care center. Any violation of the provisions of that act are a crime.

This bill would revise those procedures by, among other things, prohibiting a person from direct contact with residents until completion of the criminal record clearance. By revising those procedures this bill would revise the definition of a crime, this resulting in a state-mandated local program.

Existing law, administered by the State Department of Health Services, regulates licensing of home health agencies and private duty nursing agencies and certification of certified home health aides. Existing law requires certain persons, as part of the home health agency licensure process, as well as applicants for home health aid certification, to submit to the department fingerprints for the furnishing of the person's criminal record clearance.

This bill would revise the fingerprint requirements to use the submission of electronic fingerprint records to the Department of Justice, and would prohibit licensing or certification of those applicants within 2 years of specified circumstances.

Under existing law, the State Department of Social Services licenses and regulates various community care facilities, residential care facilities for the elderly and for persons with a chronic, life-threatening illness, and child day care facilities. Existing law requires the department to inspect certain of these facilities within 90 days of initial licensure, to evaluate compliance with applicable rules

and regulations, and to assess the facility's continuing ability to meet regulatory requirements.

Under existing law, licensees and other individuals who are present and provide care in these facilities are required to provide fingerprints and the department is required to secure the individual's criminal history, to determine whether he or she has been convicted of a crime other than a minor traffic violation, or convicted of specified sex-related offenses. Under existing law, violation of the provisions governing these facilities is a misdemeanor.

This bill would require an individual to obtain either a criminal record clearance from the Department of Justice or a criminal record exemption from the State Department of Social Services before his or her initial presence in any one of the above categories of facilities. The bill would require an applicant for facility licensure, or other specified individuals, to sign a declaration under penalty of perjury, disclosing any prior criminal convictions or arrests, or any prior disciplinary action taken against him or her by a governmental agency.

By changing the definition of an existing crime, and by expanding the crime of perjury, this bill would impose a state-mandated local program.

Under existing law, the department is required to comply with specified requirements before prohibiting a person from being employed or having contact with clients in any of the facilities described above, on the basis of a denied criminal record exemption request or arrest information.

This bill, notwithstanding existing law, would prohibit an individual whose request for an exemption has been denied, or whose exemption has been revoked, from seeking reinstatement or an exemption for 2 years. The bill would permanently exclude the individual if that individual's request for exemption was denied based on conviction for a crime for which no exemption may be granted.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law provides for the licensing and regulation of health facilities by the State Department of Health Services.~~

~~This bill would state the intent of the Legislature to enact legislation to make necessary statutory changes for establishing criminal background clearances of persons providing direct patient services in health facilities.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~yes.
State-mandated local program: ~~no~~yes.

The people of the State of California do enact as follows:

1 *SECTION. 1. Section 1265.5 of the Health and Safety Code is*
2 *amended to read:*
3 1265.5. (a) (1) Prior to the initial licensure or renewal of a
4 license of any person or persons to operate or manage an
5 intermediate care facility/developmentally disabled habilitative,
6 an intermediate care facility/developmentally disabled nursing, or
7 an intermediate care facility/developmentally disabled, other than
8 an intermediate care facility/developmentally disabled operated
9 by the state that secures criminal record clearances for its
10 employees through a method other than as specified in this
11 section or upon the hiring of direct care staff by any of these
12 facilities, ~~the state department shall secure from an appropriate~~
13 ~~law enforcement agency~~ *the Department of Justice* a criminal
14 record to determine whether the applicant, facility administrator
15 or manager, any direct care staff, or any other adult living in the
16 same location, has ever been convicted of a crime other than a
17 minor traffic violation.
18 (2) *The criminal record clearance shall require the applicant*
19 *to submit electronic fingerprint images of the facility*
20 *administrator or manager, and any direct care staff, or any other*
21 *adult living in the same location, to the Department of Justice.*
22 *Applicants shall be responsible for any cost associated with*
23 *transmitting the fingerprint images.*
24 (3) *The criminal record clearance shall be completed prior to*
25 *direct staff contact with residents of the facility administrator or*
26 *manager, and any direct care staff, or any other adult living in*
27 *the same location. A criminal record clearance shall be complete*
28 *when the department has obtained the person's criminal record*
29 *information from the Department of Justice and has determined*
30 *that the person is not disqualified from engaging in the activity*
31 *for which clearance is required.*

(b) (1) The application for licensure or renewal shall be denied if the criminal record indicates that the person seeking initial licensure or renewal of a license referred to in subdivision (a) has been convicted of a violation or attempted violation of any one or more of the following Penal Code provisions: Section 187, subdivision (a) of Section 192, Section 203, 205, 206, 207, 209, 210, 210.5, 211, 220, 222, 243.4, 245, 261, 262, or 264.1, Sections 265 to 267, inclusive, Section 273a, 273d, 273.5, or 285, subdivisions (c), (d), (f), and (g) of Section 286, Section 288, subdivisions (c), (d), (f), and (g) of Section 288a, Section 288.5, 289, 289.5, 368, 451, 459, 470, 475, 484, or 484b, Sections 484d to 484j, inclusive, or Section 487, 488, 496, 503, 518, or 666, unless any of the following applies:

(A) The person was convicted of a felony and has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code and the information or accusation against the person has been dismissed pursuant to Section 1203.4 of the Penal Code with regard to that felony.

(B) The person was convicted of a misdemeanor and the information or accusation against the person has been dismissed pursuant to Section 1203.4 or 1203.4a of the Penal Code.

(C) The person was convicted of a felony or a misdemeanor, but has previously disclosed the fact of each conviction to the department and the department has made a determination in accordance with law that the conviction does not disqualify the person.

~~(D) The person was convicted of a misdemeanor violation of Section 488 or 496 and has had no subsequent conviction of either offense in the last five years. This paragraph shall become inoperative on August 1, 2001.~~

(2) The application for licensure or renewal shall be denied if the criminal record of the person includes a conviction in another state for an offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses set forth in paragraph (1), unless evidence of rehabilitation comparable to the dismissal of a misdemeanor or a certificate of rehabilitation as set forth in subparagraph (A) or (B) of paragraph (1) is provided to the department.

(c) If the criminal record of a person described in subdivision (a) indicates any conviction other than a minor traffic violation or other than a conviction listed in subdivision (b), the department may deny the application for licensure or renewal. In determining whether or not to deny the application for licensure or renewal pursuant to this subdivision, the department shall take into consideration the following factors as evidence of good character and rehabilitation:

(1) The nature and seriousness of the offense under consideration and its relationship to their employment duties and responsibilities.

(2) Activities since conviction, including employment or participation in therapy or education, that would indicate changed behavior.

(3) The time that has elapsed since the commission of the conduct or offense referred to in paragraph (1) or (2) and the number of offenses.

(4) The extent to which the person has complied with any terms of parole, probation, restitution, or any other sanction lawfully imposed against the person.

(5) Any rehabilitation evidence, including character references, submitted by the person.

(6) Employment history and current employer recommendations.

(7) Circumstances surrounding the commission of the offense that would demonstrate the unlikelihood of repetition.

(8) The granting by the Governor of a full and unconditional pardon.

(9) A certificate of rehabilitation from a superior court.

(d) *Any person who is subject to a criminal clearance under this section who has been disqualified from engaging in the activity for which clearance is required shall not reapply for a criminal clearance for a period of two years after notification of denial of the criminal clearance.*

(e) *Any person whose license was denied or revoked pursuant to Section 1265.1 or 1294 shall not reapply for a license for a period of two years after notification of denial or revocation of the license.*

(f) Nothing in this section shall be construed to require a criminal record check of a person receiving services in an

1 intermediate care facility/developmentally disabled habilitative,
2 intermediate care facility/developmentally disabled-nursing, or
3 intermediate care facility/developmentally disabled.

4 (e)

5 (g) For purposes of this section, “direct care staff” means all
6 facility staff who are trained and experienced in the care of
7 persons with developmental disabilities and who directly provide
8 program and nursing services to clients. Administrative and
9 licensed personnel shall be considered direct care staff when
10 directly providing program and nursing services to clients.
11 Persons employed as consultants and acting as direct care staff
12 shall be subject to the same requirements for a criminal record
13 clearance as other direct care staff. However, the employing
14 facility shall not be required to pay any costs associated with that
15 criminal record clearance.

16 (f)

17 (h) Upon the employment of any person specified in
18 subdivision (a), and prior to any contact with clients or residents,
19 the facility shall ~~submit fingerprint cards to the department~~
20 *ensure that electronic fingerprint images are submitted to the*
21 *Department of Justice* for the purpose of obtaining a criminal
22 record check.

23 (g)

24 (i) The department shall develop procedures to ensure that any
25 licensee, direct care staff, or certificate holder for whom a
26 criminal record has been obtained pursuant to this section or
27 Section 1338.5 or 1736 shall not be required to obtain multiple
28 criminal record clearances.

29 *SEC. 2. Section 1337.2 of the Health and Safety Code is*
30 *amended to read:*

31 1337.2. (a) An applicant for certification as a certified nurse
32 assistant shall comply with each of the following:

33 (1) Be at least 16 years of age.

34 (2) Have successfully completed a training program approved
35 by the department, which includes an examination to test the
36 applicant’s knowledge and skills related to basic patient care
37 services.

38 (3) Obtain a criminal record clearance pursuant to Section
39 1338.5.

1 (4) *Shall not have had an application for certification denied*
2 *or a certificate revoked pursuant to Section 1337.9 or 1736.5 in*
3 *the preceding two years.*

4 (5) *Shall not have a criminal record clearance denied by the*
5 *department in the preceding two years.*

6 (b) The state department may establish procedures for issuing
7 certificates which recognize certification programs in other states
8 and countries.

9 (c) Upon written application, criminal record clearance
10 pursuant to Section 1338.5, and documentation of passing an
11 appropriate competency examination, the state department may
12 issue a certificate to any applicant who possesses a valid state
13 license as either a licensed vocational nurse or a registered nurse
14 issued by any other state or foreign country, and who, in the
15 opinion of the state department, has the qualifications specified
16 in this article.

17 (d) Upon written application, criminal record clearance
18 pursuant to Section 1338.5, and documentation of passing an
19 appropriate examination, the state department may issue a
20 certificate to any applicant who has completed the fundamentals
21 of nursing courses in a school for registered nurses, approved by
22 the Board of Registered Nursing, or in a school for licensed
23 vocational nurses, approved by the Board of Vocational Nurse
24 and Psychiatric Technician Examiners, which are substantially
25 equivalent to the certification training program specified in this
26 article.

27 (e) Every person certified as a nurse assistant under this article
28 may be known as a “certified nurse assistant” and may place the
29 letters CNA after his or her name when working in a licensed
30 health facility. An individual working independently, providing
31 personal care services, may not advertise or represent himself or
32 herself as a certified nurse assistant.

33 (f) Any person holding a nurse assistant certificate issued by
34 the state department prior to January 1, 1988, may continue to
35 hold himself or herself out as a certified nurse assistant until
36 January 1, 1991. Thereafter, it shall be unlawful for any person
37 not certified under this article to hold himself or herself out to be
38 a certified nurse assistant. Any person willfully making any false
39 representation as being a certified nurse assistant is guilty of a
40 misdemeanor.

(g) Any person who violates this article is guilty of a misdemeanor and, upon a conviction thereof, shall be punished by imprisonment in the county jail for not more than 180 days, or by a fine of not less than twenty dollars (\$20) nor more than one thousand dollars (\$1,000), or by both such fine and imprisonment.

(h) *If the department determines that a person had previously applied for a certificate under this article, and the application was denied pursuant to Section 1337.9 or 1736.5 within the last two years, the department shall reject the application and exclude the person from any facility licensed by the department as follows:*

(1) In cases where the applicant petitioned for a hearing, the department shall reject the application until two years have elapsed from the effective date of the decision and order of the department upholding the denial.

(2) In cases where the applicant did not petition for a hearing, the department shall reject the application until two years have elapsed from the date of the notification of the denial.

(3) In cases where an immediate action was taken pursuant to subdivision (i) of Section 1337.9 or subdivision (h) of Section 1736.5 and the applicant petitioned for a hearing, the department shall reject the application until two years have elapsed from the date of the notification of the revocation.

SEC. 3. Section 1337.6 of the Health and Safety Code is amended to read:

1337.6. (a) Certificates issued under this article shall be renewed every two years and renewal shall be conditional upon the occurrence of all of the following:

(1) The certificate holder submitting documentation of completion of 48 hours of in-service training every two years obtained through an approved training program or taught by a director of staff development for a licensed skilled nursing or intermediate care facility that has been approved by the state department, or by individuals or programs approved by the state department. At least 12 of the 48 hours of in-service training shall be completed in each of the two years. Twenty-four of the 48 hours of in-service training may be obtained through an online computer training program approved by the Licensing and Certification Division of the state department.

1 (2) (A) A vendor of online programs for continuing education
2 shall ensure that each online course contains all of the following:

3 (i) An interactive portion where the participants receive
4 feedback, through online communication, based on input from
5 the participant.

6 (ii) Required use of a personal identification number or
7 personal identification information to confirm the identity of the
8 participant.

9 (iii) A final screen displaying a printable statement, to be
10 signed by the participant, certifying that the identified participant
11 completed the course. The vendor shall obtain a copy of the final
12 screen statement with the original signature of the participant
13 prior to the issuance of a certificate of completion. The signed
14 statement of completion shall be maintained by the vendor for a
15 period of three years and shall be made available to the
16 department upon demand.

17 (B) The department may approve online programs for
18 continuing education that do not meet the requirements of
19 subparagraph (A) if the vendor demonstrates to the department's
20 satisfaction that, through advanced technology, the course and
21 the course delivery meet the other requirements of this section.

22 (3) The certificate holder obtaining a criminal record
23 clearance.

24 (b) Certificates issued under this article shall expire on the
25 certificate holder's birthday. If the certificate is renewed more
26 than 30 days after its expiration, the certificate holder, as a
27 condition precedent to renewal, shall also pay the delinquency
28 fee prescribed by this article.

29 (c) To renew an unexpired certificate, the certificate holder
30 shall, on or before the certificate expiration date, apply for
31 renewal on a form provided by the state department, pay the
32 renewal fee prescribed by this article, and submit documentation
33 of the required in-service training.

34 (d) The state department shall give written notice to a
35 certificate holder 90 days in advance of the renewal date and, 90
36 days in advance of the expiration of the fourth year that a
37 renewal fee has not been paid, and shall give written notice
38 informing the certificate holder, in general terms, of the
39 provisions of this article. Nonreceipt of the renewal notice does
40 not relieve the certificate holder of the obligation to make a

1 timely renewal. Failure to make a timely renewal shall result in
2 expiration of the certificate.

3 (e) Except as otherwise provided in this article, an expired
4 certificate may be renewed at any time within two years after its
5 expiration on the filing of an application for renewal on a form
6 prescribed by the state department, and payment of the renewal
7 fee in effect on the date the application is filed, and
8 documentation of the required in-service education.

9 Renewal under this article shall be effective on the date on
10 which the application is filed, on the date when the renewal fee is
11 paid, or on the date on which the delinquency fee is paid,
12 whichever occurs last. If so renewed, the certificate shall
13 continue in effect until the date provided for in this article, when
14 it shall expire if it is not again renewed.

15 (f) If a certified nurse assistant applies for renewal more than
16 two years after the expiration, the certified nurse assistant shall
17 complete an approved 75-hour competency evaluation training
18 program and competency evaluation program. If the certified
19 nurse assistant demonstrates in writing to the state department's
20 satisfaction why the certified nurse assistant cannot pay the
21 delinquency fee, then the state department on a case-by-case
22 basis shall consider waiving the delinquency fee. A suspended
23 certificate is subject to expiration and shall be renewed as
24 provided in this article, but this renewal does not entitle the
25 certificate holder, while the certificate remains suspended, and,
26 until it is reinstated, to engage in the certified activity, or in any
27 other activity or conduct in violation of the order or judgment by
28 which the certificate was suspended.

29 (g) A revoked certificate is subject to expiration as provided in
30 this article, but it cannot be renewed. If reinstatement of the
31 certificate is approved by the state department, the certificate
32 holder, as a condition precedent to reinstatement, shall pay a
33 reinstatement fee in an amount equal to the renewal fee in effect
34 on the date the application for reinstatement is filed, plus the
35 delinquency fee, if any, accrued at the time of its revocation. *If*
36 *the prior certificate was revoked within the preceding two years,*
37 *the prior certificate holder may not file an application until two*
38 *years have elapsed since the date of the revocation pursuant to*
39 *subdivision (h) of Section 1337.2.*

1 (h) Except as provided in subdivision (i), a certificate that is
2 not renewed within four years after its expiration cannot be
3 renewed, restored, reissued, or reinstated except upon completion
4 of a certification program unless deemed otherwise by the state
5 department if all of the following conditions are met:

6 (1) No fact, circumstance, or condition exists that, if the
7 certificate was issued, would justify its revocation or suspension.

8 (2) The person pays the application fee provided for by this
9 article.

10 (3) The person takes and passes any examination that may be
11 required of an applicant for a new certificate at that time, that
12 shall be given by an approved provider of a certification training
13 program.

14 (i) A certified nurse assistant whose certificate has expired
15 after two years may have his or her certificate renewed if he or
16 she pays a training application fee, completes 75 hours in an
17 approved competency evaluation training program, passes a
18 competency test, and obtains a criminal background clearance
19 prior to the renewal. The department shall develop a training
20 program for these previously certified individuals.

21 (j) Certificate holders shall notify the department within 60
22 days of any change of address. Any notice sent by the department
23 shall be effective if mailed to the current address filed with the
24 department.

25 (k) Certificate holders that have been certified as both nurse
26 assistants pursuant to this article and home health aides pursuant
27 to Chapter 8 (commencing with Section 1725) of Division 2 shall
28 renew their certificates at the same time on one application.

29 *SEC. 4. Section 1338.5 of the Health and Safety Code is*
30 *amended to read:*

31 1338.5. (a) (1) A criminal record clearance shall be
32 conducted for all nurse assistants by the submission of fingerprint
33 ~~cards images to the state department for processing at the~~
34 Department of Justice. This criminal record clearance shall be
35 completed prior to issuing or renewing a certificate, *and prior to*
36 *direct contact with residents. A criminal record shall be complete*
37 *when the department has obtained the applicant's criminal*
38 *record information from the Department of Justice, and has*
39 *determined that the person is not disqualified from engaging in*
40 *the activity for which clearance is required.* Applicants shall be

1 responsible for any costs associated with ~~rolling~~ *transmitting* the
2 fingerprint ~~cards~~ *images*. The fee to cover the processing costs of
3 the Department of Justice, not including the costs associated with
4 rolling the fingerprint cards, shall not exceed thirty-two dollars
5 (\$32) ~~per card~~ *per submission*.

6 (2) (A) Upon enrollment in a training program for nurse
7 assistant certification, and prior to direct contact with residents, a
8 candidate for training shall submit a training and examination
9 application ~~and the fingerprint cards~~ to the ~~state~~ department *and*
10 *submit electronic fingerprint images* to receive a criminal record
11 review through the Department of Justice. Submission of the
12 fingerprints to the Federal Bureau of Investigation shall be at the
13 discretion of the ~~state~~ department. *The criminal record shall be*
14 *completed prior to direct contact with residents by the nurse*
15 *assistant applicant*.

16 (B) New nurse assistant applicants who are unemployed and
17 unable to pay the fee charged by the Department of Justice
18 pursuant to paragraph (1) of subdivision (a) due to financial
19 hardship may request a waiver for a period not to exceed six
20 months. The request for waiver shall be made in writing at the
21 time the fingerprint card is submitted for processing. The
22 applicant shall agree to pay the fee within six months of
23 employment. The failure to pay the fee within the six-month
24 period shall result in the inactivation of the applicant's certificate
25 until the fee is paid in full.

26 (b) Upon receipt of the fingerprints, the Department of Justice
27 shall notify the state department of the criminal record
28 information, as provided for in this subdivision. If no criminal
29 record information has been recorded, the Department of Justice
30 shall provide the state department with a statement of that fact. If
31 the fingerprints are illegible, the Department of Justice shall,
32 within 15 calendar days from receipt of the fingerprints, notify
33 the state department of that fact.

34 (c) The department shall respond to the applicant and
35 employer within 30 days from the date of receipt of the
36 fingerprint cards.

37 (d) The use of fingerprint live-scan technology implemented
38 by the Department of Justice by the year 1999 shall be used by
39 the Department of Justice to generate timely and accurate
40 positive fingerprint identification prior to nurse assistant

1 certification *and prior to direct contact with residents by the*
2 *nurse assistant applicant.*

3 (e) The state department shall develop procedures to ensure
4 that any licensee, direct care staff, or certificate holder for whom
5 a criminal record has been obtained pursuant to this section or
6 Section 1265.5 or 1736 shall not be required to obtain multiple
7 criminal record clearances.

8 ~~(f) If the department receives a fingerprint card from a~~
9 ~~certified nursing assistant 60 days prior to the expiration of the~~
10 ~~certified nursing assistant's certification and the department has~~
11 ~~received no response from the Department of Justice, or if the~~
12 ~~department is experiencing a delay in processing the renewal of~~
13 ~~the certified nursing assistant's certification at the time of the~~
14 ~~expiration of the certified nursing assistant's certification, the~~
15 ~~department may extend the expiration of the certified nursing~~
16 ~~assistant's certification for 60 days. This provision shall expire~~
17 ~~August 1, 2001.~~

18 SEC. 5. Section 1416.26 of the Health and Safety Code is
19 amended to read:

20 1416.26. (a) As part of the application process for a nursing
21 home administrator license, an applicant shall submit ~~to the~~
22 ~~department two sets of completed fingerprint cards~~ *electronic*
23 *fingerprint images*, for a criminal record clearance ~~through, to the~~
24 Department of Justice and the Federal Bureau of Investigation.
25 ~~As an alternative, the~~ *The applicant may also shall* provide proof
26 of electronic transmission of fingerprints to the Department of
27 Justice and the Federal Bureau of Investigation. Upon receipt of
28 the fingerprints, the Department of Justice and the Federal
29 Bureau of Investigation shall notify the department of the
30 criminal record information. If no criminal record information
31 has been recorded, the Department of Justice and the Federal
32 Bureau of Investigation shall provide the department with a
33 statement of that fact.

34 (b) This criminal record clearance shall be completed prior to
35 issuing a license. Applicants shall be responsible for any costs
36 associated with the criminal record clearance. The fee to cover
37 the processing costs of the Department of Justice, not including
38 the costs associated with ~~rolling the fingerprint cards~~ *transmitting*
39 *the fingerprint images*, shall not exceed thirty-two dollars (\$32)

1 per card for state fingerprints, and shall not exceed twenty-four
2 dollars (\$24) per ~~card~~ submission for federal fingerprints.

3 (c) A criminal record clearance shall be completed prior to
4 acceptance of an application by the Nursing Home Administrator
5 Program and prior to the applicant's direct contact with
6 patients.

7 (d) A criminal record clearance shall be complete when the
8 department has obtained the person's criminal record
9 information from the Department of Justice and has determined
10 that the person is not disqualified from engaging in the activity
11 for which clearance is required.

12 (e) A person subject to a criminal clearance under this section
13 that has been disqualified from engaging in the activity for which
14 clearance is required shall not reapply for licensure until two
15 years after notification of denial of the criminal record
16 clearance.

17 SEC. 6. Chapter 2.6 (commencing with Section 1499) is
18 added to Division 2 of the Health and Safety Code, to read:

19
20 CHAPTER 2.6. USE OF ADMINISTRATIVE ACTION FOR
21 LICENSURE
22

23 1499. (a) Any person or entity licensed or certificated under
24 Chapter 1 (commencing with Section 1200), Chapter 2
25 (commencing with Section 1250), Chapter 2.3 (commencing with
26 Section 1400), Chapter 2.35 (commencing with Section 1416),
27 Chapter 3.3 (commencing with Section 1570), Chapter 8
28 (commencing with Section 1725), Chapter 8.3 (commencing with
29 Section 1743), Chapter 8.5 (commencing with Section 1745),
30 Chapter 8.6 (commencing with Section 1760), or Chapter 11
31 (commencing with Section 1794.01), or under Section 1247.6 of
32 the Business and Professions Code, shall, in addition to all other
33 requirements, disclose as part of the application, under penalty
34 of perjury, for the license or certificate any revocation or other
35 disciplinary action taken or proposed against a license,
36 certificate, registration, or other approval to engage in a
37 profession, vocation, or occupation, or a license or other
38 permission to operate a facility or institution.

39 (b) The department may consider, in determining whether to
40 grant or deny the license or certification, any final revocation or

1 *other disciplinary action taken or proposed against a license,*
2 *certificate, registration, or other permission to engage in a*
3 *profession, vocation, or occupation or a license or other*
4 *permission to operate a facility or institution.*

5 *SEC. 7. Section 1522 of the Health and Safety Code is*
6 *amended to read:*

7 1522. The Legislature recognizes the need to generate timely
8 and accurate positive fingerprint identification of applicants as a
9 condition of issuing licenses, permits, or certificates of approval
10 for persons to operate or provide direct care services in a
11 community care facility, foster family home, or a certified family
12 home of a licensed foster family agency. Therefore, the
13 Legislature supports the use of the fingerprint live-scan
14 technology, as identified in the long-range plan of the
15 Department of Justice for fully automating the processing of
16 fingerprints and other data by the year 1999, otherwise known as
17 the California Crime Information Intelligence System (CAL-CII),
18 to be used for applicant fingerprints. It is the intent of the
19 Legislature in enacting this section to require the fingerprints of
20 those individuals whose contact with community care clients
21 may pose a risk to the clients' health and safety. *An individual*
22 *shall be required to obtain either a criminal record clearance*
23 *from the Department of Justice or a criminal record exemption*
24 *from the State Department of Social Services before his or her*
25 *initial presence in a community care facility.*

26 (a) (1) Before issuing a license or special permit to any person
27 or persons to operate or manage a community care facility, the
28 State Department of Social Services shall secure from an
29 appropriate law enforcement agency a criminal record to
30 determine whether the applicant or any other person specified in
31 subdivision (b) has ever been convicted of a crime other than a
32 minor traffic violation or arrested for any crime specified in
33 Section 290 of the Penal Code, for violating Section 245 or
34 273.5, of the Penal Code, subdivision (b) of Section 273a of the
35 Penal Code, or, prior to January 1, 1994, paragraph (2) of Section
36 273a of the Penal Code, or for any crime for which the
37 department cannot grant an exemption if the person was
38 convicted and the person has not been exonerated.

1 (2) The criminal history information shall include the full
2 criminal record, if any, of those persons, and subsequent arrest
3 information pursuant to Section 11105.2 of the Penal Code.

4 (3) Except during the 2003-04, 2004-05, and 2005-06 fiscal
5 years, neither the Department of Justice nor the State Department
6 of Social Services may charge a fee for the fingerprinting of an
7 applicant for a license or special permit to operate a facility
8 providing nonmedical board, room, and care for six or less
9 children or for obtaining a criminal record of the applicant
10 pursuant to this section.

11 (4) The following shall apply to the criminal record
12 information:

13 (A) If the State Department of Social Services finds that the
14 applicant, or any other person specified in subdivision (b), has
15 been convicted of a crime other than a minor traffic violation, the
16 application shall be denied, unless the director grants an
17 exemption pursuant to subdivision (g).

18 (B) If the State Department of Social Services finds that the
19 applicant, or any other person specified in subdivision (b) is
20 awaiting trial for a crime other than a minor traffic violation, the
21 State Department of Social Services may cease processing the
22 application until the conclusion of the trial.

23 (C) If no criminal record information has been recorded, the
24 Department of Justice shall provide the applicant and the State
25 Department of Social Services with a statement of that fact.

26 (D) If the State Department of Social Services finds after
27 licensure that the licensee, or any other person specified in
28 paragraph (2) of subdivision (b), has been convicted of a crime
29 other than a minor traffic violation, the license may be revoked,
30 unless the director grants an exemption pursuant to subdivision
31 (g).

32 (E) An applicant and any other person specified in subdivision
33 (b) shall submit a second set of fingerprints to the Department of
34 Justice for the purpose of searching the criminal records of the
35 Federal Bureau of Investigation, in addition to the criminal
36 records search required by this subdivision. If an applicant and
37 all other persons described in subdivision (b) meet all of the
38 conditions for licensure, except receipt of the Federal Bureau of
39 Investigation's criminal history information for the applicant or
40 any of the persons described in subdivision (b), the department

1 may issue a license if the applicant and each person described in
2 subdivision (b) has signed and submitted a statement that he or
3 she has never been convicted of a crime in the United States,
4 other than a traffic infraction, as defined in paragraph (1) of
5 subdivision (a) of Section 42001 of the Vehicle Code. If, after
6 licensure, the department determines that the licensee or any
7 other person specified in subdivision (b) has a criminal record,
8 the license may be revoked pursuant to Section 1550. The
9 department may also suspend the license pending an
10 administrative hearing pursuant to Section 1550.5.

11 *(F) An applicant and any other person specified in subdivision*
12 *(b), as a part of the background clearance process, shall sign a*
13 *declaration under penalty of perjury disclosing whether or not*
14 *the person has any prior criminal convictions or arrests, or has*
15 *had any prior disciplinary action taken against him or her by any*
16 *federal, state, or local governmental agency.*

17 (b) (1) In addition to the applicant, this section shall be
18 applicable to criminal convictions of the following persons:

19 (A) Adults responsible for administration or direct supervision
20 of staff.

21 (B) Any person, other than a client, residing in the facility.

22 (C) Any person who provides client assistance in dressing,
23 grooming, bathing, or personal hygiene. Any nurse assistant or
24 home health aide meeting the requirements of Section 1338.5 or
25 1736.6, respectively, who is not employed, retained, or
26 contracted by the licensee, and who has been certified or
27 recertified on or after July 1, 1998, shall be deemed to meet the
28 criminal record clearance requirements of this section. A certified
29 nurse assistant and certified home health aide who will be
30 providing client assistance and who falls under this exemption
31 shall provide one copy of his or her current certification, prior to
32 providing care, to the community care facility. The facility shall
33 maintain the copy of the certification on file as long as care is
34 being provided by the certified nurse assistant or certified home
35 health aide at the facility. Nothing in this paragraph restricts the
36 right of the department to exclude a certified nurse assistant or
37 certified home health aide from a licensed community care
38 facility pursuant to Section 1558.

39 (D) Any staff person, volunteer, or employee who has contact
40 with the clients.

1 (E) If the applicant is a firm, partnership, association, or
2 corporation, the chief executive officer or other person serving in
3 like capacity.

4 (F) Additional officers of the governing body of the applicant,
5 or other persons with a financial interest in the applicant, as
6 determined necessary by the department by regulation. The
7 criteria used in the development of these regulations shall be
8 based on the person's capability to exercise substantial influence
9 over the operation of the facility.

10 (2) The following persons are exempt from the requirements
11 applicable under paragraph (1):

12 (A) A medical professional as defined in department
13 regulations who holds a valid license or certification from the
14 person's governing California medical care regulatory entity and
15 who is not employed, retained, or contracted by the licensee if all
16 of the following apply:

17 (i) The criminal record of the person has been cleared as a
18 condition of licensure or certification by the person's governing
19 California medical care regulatory entity.

20 (ii) The person is providing time-limited specialized clinical
21 care or services.

22 (iii) The person is providing care or services within the
23 person's scope of practice.

24 (iv) The person is not a community care facility licensee or an
25 employee of the facility.

26 (B) A third-party repair person or similar retained contractor if
27 all of the following apply:

28 (i) The person is hired for a defined, time-limited job.

29 (ii) The person is not left alone with clients.

30 (iii) When clients are present in the room in which the
31 repairperson or contractor is working, a staff person who has a
32 criminal record clearance or exemption is also present.

33 (C) Employees of a licensed home health agency and other
34 members of licensed hospice interdisciplinary teams who have a
35 contract with a client or resident of the facility and are in the
36 facility at the request of that client or resident's legal
37 decisionmaker. The exemption does not apply to a person who is
38 a community care facility licensee or an employee of the facility.

39 (D) Clergy and other spiritual caregivers who are performing
40 services in common areas of the community care facility or who

1 are advising an individual client at the request of, or with the
2 permission of, the client or legal decisionmaker, are exempt from
3 fingerprint and criminal background check requirements imposed
4 by community care licensing. This exemption does not apply to a
5 person who is a community care licensee or employee of the
6 facility.

7 (E) Members of fraternal, service, or similar organizations
8 who conduct group activities for clients if all of the following
9 apply:

- 10 (i) Members are not left alone with clients.
11 (ii) Members do not transport clients off the facility premises.
12 (iii) The same organization does not conduct group activities
13 for clients more often than defined by the department's
14 regulations.

15 (3) In addition to the exemptions in paragraph (2), the
16 following persons in foster family homes, certified family homes,
17 and small family homes are exempt from the requirements
18 applicable under paragraph (1):

19 (A) Adult friends and family of the licensed or certified foster
20 parent, who come into the home to visit for a length of time no
21 longer than defined by the department in regulations, provided
22 that the adult friends and family of the licensee are not left alone
23 with the foster children. However, the licensee, acting as a
24 reasonable and prudent parent, as defined in paragraph (2) of
25 subdivision (a) of Section 362.04 of the Welfare and Institutions
26 Code, may allow his or her adult friends and family to provide
27 short-term care to the foster child and act as an appropriate
28 occasional short-term babysitter for the child.

29 (B) Parents of a foster child's friends when the foster child is
30 visiting the friend's home and the friend, licensed or certified
31 foster parent, or both are also present. However, the licensee,
32 acting as a reasonable and prudent parent, may allow the parent
33 of the foster child's friends to act as an appropriate short-term
34 babysitter for the child without the friend being present.

35 (C) Individuals who are engaged by any licensed or certified
36 foster parent to provide short-term care to the child for periods
37 not to exceed 24 hours. Caregivers shall use a reasonable and
38 prudent parent standard in selecting appropriate individuals to act
39 as appropriate occasional short-term babysitters.

(4) In addition to the exemptions specified in paragraph (2), the following persons in adult day care and adult day support centers are exempt from the requirements applicable under paragraph (1):

(A) Unless contraindicated by the client's individualized program plan (IPP) or needs and service plan, a spouse, significant other, relative, or close friend of a client, or an attendant or a facilitator for a client with a developmental disability if the attendant or facilitator is not employed, retained, or contracted by the licensee. This exemption applies only if the person is visiting the client or providing direct care and supervision to the client.

(B) A volunteer if all of the following applies:

(i) The volunteer is supervised by the licensee or a facility employee with a criminal record clearance or exemption.

(ii) The volunteer is never left alone with clients.

(iii) The volunteer does not provide any client assistance with dressing, grooming, bathing, or personal hygiene other than washing of hands.

(5) (A) In addition to the exemptions specified in paragraph (2), the following persons in adult residential and social rehabilitation facilities, unless contraindicated by the client's individualized program plan (IPP) or needs and services plan, are exempt from the requirements applicable under paragraph (1): a spouse, significant other, relative, or close friend of a client, or an attendant or a facilitator for a client with a developmental disability if the attendant or facilitator is not employed, retained, or contracted by the licensee. This exemption applies only if the person is visiting the client or providing direct care and supervision to that client.

(B) Nothing in this subdivision shall prevent a licensee from requiring a criminal record clearance of any individual exempt from the requirements of this section, provided that the individual has client contact.

(6) Any person similar to those described in this subdivision, as defined by the department in regulations.

(c) (1) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a community care facility, be fingerprinted and sign a declaration under

1 penalty of perjury regarding any prior criminal convictions. The
2 licensee shall submit these fingerprints to the Department of
3 Justice, along with a second set of fingerprints for the purpose of
4 searching the records of the Federal Bureau of Investigation, or
5 to comply with paragraph (1) of subdivision (h), prior to the
6 person's employment, residence, or initial presence in the
7 community care facility. These fingerprints shall be on a card
8 provided by the State Department of Social Services or sent by
9 electronic transmission in a manner approved by the State
10 Department of Social Services and the Department of Justice for
11 the purpose of obtaining a permanent set of fingerprints, and
12 shall be submitted to the Department of Justice by the licensee. A
13 licensee's failure to submit fingerprints to the Department of
14 Justice or to comply with paragraph (1) of subdivision (h), as
15 required in this section, shall result in the citation of a deficiency
16 and the immediate assessment of civil penalties in the amount of
17 one hundred dollars (\$100) per violation, per day for a maximum
18 of five days, unless the violation is a second or subsequent
19 violation within a 12-month period in which case the civil
20 penalties shall be in the amount of one hundred dollars (\$100)
21 per violation for a maximum of 30 days, and shall be grounds for
22 disciplining the licensee pursuant to Section 1550. The
23 department may assess civil penalties for continued violations as
24 permitted by Section 1548. The fingerprints shall then be
25 submitted to the State Department of Social Services for
26 processing. Upon request of the licensee, who shall enclose a
27 self-addressed stamped postcard for this purpose, the Department
28 of Justice shall verify receipt of the fingerprints.

29 (2) Within 14 calendar days of the receipt of the fingerprints,
30 the Department of Justice shall notify the State Department of
31 Social Services of the criminal record information, as provided
32 for in subdivision (a). If no criminal record information has been
33 recorded, the Department of Justice shall provide the licensee
34 and the State Department of Social Services with a statement of
35 that fact within 14 calendar days of receipt of the fingerprints.
36 Documentation of the individual's clearance or exemption shall
37 be maintained by the licensee and be available for inspection. If
38 new fingerprints are required for processing, the Department of
39 Justice shall, within 14 calendar days from the date of receipt of
40 the fingerprints, notify the licensee that the fingerprints were

1 illegible. When live-scan technology is operational, as defined in
2 Section 1522.04, the Department of Justice shall notify the State
3 Department of Social Services, as required by that section, and
4 shall also notify the licensee by mail, within 14 days of electronic
5 transmission of the fingerprints to the Department of Justice, if
6 the person has no criminal history recorded. A violation of the
7 regulations adopted pursuant to Section 1522.04 shall result in
8 the citation of a deficiency and an immediate assessment of civil
9 penalties in the amount of one hundred dollars (\$100) per
10 violation, per day for a maximum of five days, unless the
11 violation is a second or subsequent violation within a 12-month
12 period in which case the civil penalties shall be in the amount of
13 one hundred dollars (\$100) per violation for a maximum of 30
14 days, and shall be grounds for disciplining the licensee pursuant
15 to Section 1550. The department may assess civil penalties for
16 continued violations as permitted by Section 1548.

17 (3) Except for persons specified in paragraph (2) of
18 subdivision (b), the licensee shall endeavor to ascertain the
19 previous employment history of persons required to be
20 fingerprinted under this subdivision. If it is determined by the
21 State Department of Social Services, on the basis of the
22 fingerprints submitted to the Department of Justice, that the
23 person has been convicted of, or is awaiting trial for, a sex
24 offense against a minor, or has been convicted for an offense
25 specified in Section 243.4, 273a, 273d, 273g, or 368 of the Penal
26 Code, or a felony, the State Department of Social Services shall
27 notify the licensee to act immediately to terminate the person's
28 employment, remove the person from the community care
29 facility, or bar the person from entering the community care
30 facility. The State Department of Social Services may
31 subsequently grant an exemption pursuant to subdivision (g). If
32 the conviction or arrest was for another crime, except a minor
33 traffic violation, the licensee shall, upon notification by the State
34 Department of Social Services, act immediately to either (A)
35 terminate the person's employment, remove the person from the
36 community care facility, or bar the person from entering the
37 community care facility; or (B) seek an exemption pursuant to
38 subdivision (g). The State Department of Social Services shall
39 determine if the person shall be allowed to remain in the facility
40 until a decision on the exemption is rendered. A licensee's failure

1 to comply with the department's prohibition of employment,
2 contact with clients, or presence in the facility as required by this
3 paragraph shall be grounds for disciplining the licensee pursuant
4 to Section 1550.

5 (4) The department may issue an exemption on its own motion
6 pursuant to subdivision (g) if the person's criminal history
7 indicates that the person is of good character based on the age,
8 seriousness, and frequency of the conviction or convictions. The
9 department, in consultation with interested parties, shall develop
10 regulations to establish the criteria to grant an exemption
11 pursuant to this paragraph.

12 (5) Concurrently with notifying the licensee pursuant to
13 paragraph (3), the department shall notify the affected individual
14 of his or her right to seek an exemption pursuant to subdivision
15 (g). The individual may seek an exemption only if the licensee
16 terminates the person's employment or removes the person from
17 the facility after receiving notice from the department pursuant to
18 paragraph (3).

19 (d) (1) Before issuing a license, special permit, or certificate
20 of approval to any person or persons to operate or manage a
21 foster family home or certified family home as described in
22 Section 1506, the State Department of Social Services or other
23 approving authority shall secure from an appropriate law
24 enforcement agency a criminal record to determine whether the
25 applicant or any person specified in subdivision (b) has ever been
26 convicted of a crime other than a minor traffic violation or
27 arrested for any crime specified in Section 290 of the Penal
28 Code, for violating Section 245 or 273.5, subdivision (b) of
29 Section 273a or, prior to January 1, 1994, paragraph (2) of
30 Section 273a of the Penal Code, or for any crime for which the
31 department cannot grant an exemption if the person was
32 convicted and the person has not been exonerated.

33 (2) The criminal history information shall include the full
34 criminal record, if any, of those persons.

35 (3) Neither the Department of Justice nor the State Department
36 of Social Services may charge a fee for the fingerprinting of an
37 applicant for a license, special permit, or certificate of approval
38 described in this subdivision. The record, if any, shall be taken
39 into consideration when evaluating a prospective applicant.

1 (4) The following shall apply to the criminal record
2 information:

3 (A) If the applicant or other persons specified in subdivision
4 (b) have convictions that would make the applicant's home unfit
5 as a foster family home or a certified family home, the license,
6 special permit, or certificate of approval shall be denied.

7 (B) If the State Department of Social Services finds that the
8 applicant, or any person specified in subdivision (b) is awaiting
9 trial for a crime other than a minor traffic violation, the State
10 Department of Social Services or other approving authority may
11 cease processing the application until the conclusion of the trial.

12 (C) For the purposes of this subdivision, a criminal record
13 clearance provided under Section 8712 of the Family Code may
14 be used by the department or other approving agency.

15 (D) An applicant for a foster family home license or for
16 certification as a family home, and any other person specified in
17 subdivision (b), shall submit a set of fingerprints to the
18 Department of Justice for the purpose of searching the criminal
19 records of the Federal Bureau of Investigation, in addition to the
20 criminal records search required by subdivision (a). If an
21 applicant meets all other conditions for licensure, except receipt
22 of the Federal Bureau of Investigation's criminal history
23 information for the applicant and all persons described in
24 subdivision (b), the department may issue a license, or the foster
25 family agency may issue a certificate of approval, if the
26 applicant, and each person described in subdivision (b), has
27 signed and submitted a statement that he or she has never been
28 convicted of a crime in the United States, other than a traffic
29 infraction, as defined in paragraph (1) of subdivision (a) of
30 Section 42001 of the Vehicle Code. If, after licensure or
31 certification, the department determines that the licensee,
32 certified foster parent, or any person specified in subdivision (b)
33 has a criminal record, the license may be revoked pursuant to
34 Section 1550 and the certificate of approval revoked pursuant to
35 subdivision (b) of Section 1534. The department may also
36 suspend the license pending an administrative hearing pursuant
37 to Section 1550.5.

38 (5) Any person specified in this subdivision shall, as a part of
39 the application, be fingerprinted and sign a declaration under
40 penalty of perjury regarding any prior criminal convictions or

1 arrests for any crime against a child, spousal or cohabitant abuse
2 or, any crime for which the department cannot grant an
3 exemption if the person was convicted and shall submit these
4 fingerprints to the licensing agency or other approving authority.

5 (6) (A) The foster family agency shall obtain fingerprints
6 from certified home applicants and from persons specified in
7 subdivision (b) and shall submit them directly to the Department
8 of Justice or send them by electronic transmission in a manner
9 approved by the State Department of Social Services. A foster
10 family home licensee or foster family agency shall submit these
11 fingerprints to the Department of Justice, along with a second set
12 of fingerprints for the purpose of searching the records of the
13 Federal Bureau of Investigation or to comply with paragraph (1)
14 of subdivision (b) prior to the person's employment, residence, or
15 initial presence. A foster family agency's failure to submit
16 fingerprints to the Department of Justice, or comply with
17 paragraph (1) of subdivision (h), as required in this section, shall
18 result in a citation of a deficiency, and the immediate civil
19 penalties of one hundred dollars (\$100) per violation, per day for
20 a maximum of five days, unless the violation is a second or
21 subsequent violation within a 12-month period in which case the
22 civil penalties shall be in the amount of one hundred dollars
23 (\$100) per violation for a maximum of 30 days, and shall be
24 grounds for disciplining the licensee pursuant to Section 1550. A
25 violation of the regulation adopted pursuant to Section 1522.04
26 shall result in the citation of a deficiency and an immediate
27 assessment of civil penalties in the amount of one hundred
28 dollars (\$100) per violation, per day for a maximum of five days,
29 unless the violation is a second or subsequent violation within a
30 12-month period in which case the civil penalties shall be in the
31 amount of one hundred dollars (\$100) per violation for a
32 maximum of 30 days, and shall be grounds for disciplining the
33 foster family agency pursuant to Section 1550. A licensee's
34 failure to submit fingerprints to the Department of Justice, or
35 comply with paragraph (1) of subdivision (h), as required in this
36 section, may result in the citation of a deficiency and immediate
37 civil penalties of one hundred dollars (\$100) per violation. A
38 licensee's violation of regulations adopted pursuant to Section
39 1522.04 may result in the citation of a deficiency and an
40 immediate assessment of civil penalties in the amount of one

1 hundred dollars (\$100) per violation. The State Department of
2 Social Services may assess penalties for continued violations, as
3 permitted by Section 1548. The fingerprints shall then be
4 submitted to the State Department of Social Services for
5 processing.

6 (B) Upon request of the licensee, who shall enclose a
7 self-addressed envelope for this purpose, the Department of
8 Justice shall verify receipt of the fingerprints. Within five
9 working days of the receipt of the criminal record or information
10 regarding criminal convictions from the Department of Justice,
11 the department shall notify the applicant of any criminal arrests
12 or convictions. If no arrests or convictions are recorded, the
13 Department of Justice shall provide the foster family home
14 licensee or the foster family agency with a statement of that fact
15 concurrent with providing the information to the State
16 Department of Social Services.

17 (7) If the State Department of Social Services finds that the
18 applicant, or any other person specified in subdivision (b), has
19 been convicted of a crime other than a minor traffic violation, the
20 application shall be denied, unless the director grants an
21 exemption pursuant to subdivision (g).

22 (8) If the State Department of Social Services finds after
23 licensure or the granting of the certificate of approval that the
24 licensee, certified foster parent, or any other person specified in
25 paragraph (2) of subdivision (b), has been convicted of a crime
26 other than a minor traffic violation, the license or certificate of
27 approval may be revoked by the department or the foster family
28 agency, whichever is applicable, unless the director grants an
29 exemption pursuant to subdivision (g). A licensee's failure to
30 comply with the department's prohibition of employment,
31 contact with clients, or presence in the facility as required by
32 paragraph (3) of subdivision (c) shall be grounds for disciplining
33 the licensee pursuant to Section 1550.

34 (e) The State Department of Social Services may not use a
35 record of arrest to deny, revoke, or terminate any application,
36 license, employment, or residence unless the department
37 investigates the incident and secures evidence, whether or not
38 related to the incident of arrest, that is admissible in an
39 administrative hearing to establish conduct by the person that
40 may pose a risk to the health and safety of any person who is or

1 may become a client. The State Department of Social Services is
2 authorized to obtain any arrest or conviction records or reports
3 from any law enforcement agency as necessary to the
4 performance of its duties to inspect, license, and investigate
5 community care facilities and individuals associated with a
6 community care facility.

7 (f) (1) For purposes of this section or any other provision of
8 this chapter, a conviction means a plea or verdict of guilty or a
9 conviction following a plea of nolo contendere. Any action that
10 the State Department of Social Services is permitted to take
11 following the establishment of a conviction may be taken when
12 the time for appeal has elapsed, when the judgment of conviction
13 has been affirmed on appeal, or when an order granting probation
14 is made suspending the imposition of sentence, notwithstanding
15 a subsequent order pursuant to Sections 1203.4 and 1203.4a of
16 the Penal Code permitting the person to withdraw his or her plea
17 of guilty and to enter a plea of not guilty, or setting aside the
18 verdict of guilty, or dismissing the accusation, information, or
19 indictment. For purposes of this section or any other provision of
20 this chapter, the record of a conviction, or a copy thereof certified
21 by the clerk of the court or by a judge of the court in which the
22 conviction occurred, shall be conclusive evidence of the
23 conviction. For purposes of this section or any other provision of
24 this chapter, the arrest disposition report certified by the
25 Department of Justice, or documents admissible in a criminal
26 action pursuant to Section 969b of the Penal Code, shall be prima
27 facie evidence of the conviction, notwithstanding any other
28 provision of law prohibiting the admission of these documents in
29 a civil or administrative action.

30 (2) For purposes of this section or any other provision of this
31 chapter, the department shall consider criminal convictions from
32 another state or federal court as if the criminal offense was
33 committed in this state.

34 (g) (1) After review of the record, the director may grant an
35 exemption from disqualification for a license or special permit as
36 specified in paragraphs (1) and (4) of subdivision (a), or for a
37 license, special permit, or certificate of approval as specified in
38 paragraphs (4) and (5) of subdivision (d), or for employment,
39 residence, or presence in a community care facility as specified
40 in paragraphs (3), (4), and (5) of subdivision (c), if the director

1 has substantial and convincing evidence to support a reasonable
2 belief that the applicant and the person convicted of the crime, if
3 other than the applicant, are of good character as to justify
4 issuance of the license or special permit or granting an exemption
5 for purposes of subdivision (c). Except as otherwise provided in
6 this subdivision, an exemption may not be granted pursuant to
7 this subdivision if the conviction was for any of the following
8 offenses:

9 (A) (i) An offense specified in Section 220, 243.4, or 264.1,
10 subdivision (a) of Section 273a or, prior to January 1, 1994,
11 paragraph (1) of Section 273a, Section 273d, 288, or 289,
12 subdivision (a) of Section 290, or Section 368 of the Penal Code,
13 or was a conviction of another crime against an individual
14 specified in subdivision (c) of Section 667.5 of the Penal Code.

15 (ii) Notwithstanding clause (i), the director may grant an
16 exemption regarding the conviction for an offense described in
17 paragraph (1), (2), (7), or (8) of subdivision (c) of Section 667.5
18 of the Penal Code, if the employee or prospective employee has
19 been rehabilitated as provided in Section 4852.03 of the Penal
20 Code, has maintained the conduct required in Section 4852.05 of
21 the Penal Code for at least 10 years, and has the recommendation
22 of the district attorney representing the employee's county of
23 residence, or if the employee or prospective employee has
24 received a certificate of rehabilitation pursuant to Chapter 3.5
25 (commencing with Section 4852.01) of Title 6 of Part 3 of the
26 Penal Code.

27 (B) A felony offense specified in Section 729 of the Business
28 and Professions Code or Section 206 or 215, subdivision (a) of
29 Section 347, subdivision (b) of Section 417, or subdivision (a) of
30 Section 451 of the Penal Code.

31 (2) The department may not prohibit a person from being
32 employed or having contact with clients in a facility on the basis
33 of a denied criminal record exemption request or arrest
34 information unless the department complies with the
35 requirements of Section 1558. *Notwithstanding subparagraph*
36 *(B) of paragraph (1) of, and subparagraph (B) of paragraph (2)*
37 *of, subdivision (h), of Section 1558, if a request for an exemption*
38 *has been denied, or an exemption has been revoked, the*
39 *individual shall be prohibited for a period of two years from*
40 *seeking reinstatement or an exemption, unless the individual has*

1 *been convicted of a crime for which no exemption can be*
2 *granted. If a request for an exemption has been denied based on*
3 *conviction for a crime for which no exemption may be granted,*
4 *the individual shall be excluded for the remainder of his or her*
5 *life.*

6 (h) (1) For purposes of compliance with this section, the
7 department may permit an individual to transfer a current
8 criminal record clearance, as defined in subdivision (a), from one
9 facility to another, as long as the criminal record clearance has
10 been processed through a state licensing district office, and is
11 being transferred to another facility licensed by a state licensing
12 district office. The request shall be in writing to the State
13 Department of Social Services, and shall include a copy of the
14 person's driver's license or valid identification card issued by the
15 Department of Motor Vehicles, or a valid photo identification
16 issued by another state or the United States government if the
17 person is not a California resident. Upon request of the licensee,
18 who shall enclose a self-addressed envelope for this purpose, the
19 State Department of Social Services shall verify whether the
20 individual has a clearance that can be transferred.

21 (2) The State Department of Social Services shall hold
22 criminal record clearances in its active files for a minimum of
23 two years after an employee is no longer employed at a licensed
24 facility in order for the criminal record clearance to be
25 transferred.

26 (3) The following shall apply to a criminal record clearance or
27 exemption from the department or a county office with
28 department delegated licensing authority:

29 (A) A county office with department delegated licensing
30 authority may accept a clearance or exemption from the
31 department.

32 (B) The department may accept a clearance or exemption from
33 any county office with department delegated licensing authority.

34 (C) A county office with department delegated licensing
35 authority may accept a clearance or exemption from any other
36 county office with department delegated licensing authority.

37 (4) With respect to notifications issued by the Department of
38 Justice pursuant to Section 11105.2 of the Penal Code concerning
39 an individual whose criminal record clearance was originally

1 processed by the department or a county office with department
2 delegated licensing authority, all of the following shall apply:

3 (A) The Department of Justice shall process a request from the
4 department or a county office with department delegated
5 licensing authority to receive the notice only if all of the
6 following conditions are met:

7 (i) The request shall be submitted to the Department of Justice
8 by the agency to be substituted to receive the notification.

9 (ii) The request shall be for the same applicant type as the
10 type for which the original clearance was obtained.

11 (iii) The request shall contain all prescribed data elements and
12 format protocols pursuant to a written agreement between the
13 department and the Department of Justice.

14 (B) (i) On or before January 7, 2005, the department shall
15 notify the Department of Justice of all county offices that have
16 department delegated licensing authority.

17 (ii) The department shall notify the Department of Justice
18 within 15 calendar days of the date on which a new county office
19 receives department delegated licensing authority or a county's
20 delegated licensing authority is rescinded.

21 (C) The Department of Justice shall charge the department or
22 a county office with department delegated licensing authority a
23 fee for each time a request to substitute the recipient agency is
24 received for purposes of this paragraph. This fee shall not exceed
25 the cost of providing the service.

26 (i) The full criminal record obtained for purposes of this
27 section may be used by the department or by a licensed adoption
28 agency as a clearance required for adoption purposes.

29 (j) If a licensee or facility is required by law to deny
30 employment or to terminate employment of any employee based
31 on written notification from the state department that the
32 employee has a prior criminal conviction or is determined
33 unsuitable for employment under Section 1558, the licensee or
34 facility shall not incur civil liability or unemployment insurance
35 liability as a result of that denial or termination.

36 (k) (1) The Department of Justice shall coordinate with the
37 State Department of Social Services to establish and implement
38 an automated live-scan processing system for fingerprints in the
39 district offices of the Community Care Licensing Division of the
40 State Department of Social Services by July 1, 1999. These

1 live-scan processing units shall be connected to the main system
2 at the Department of Justice by July 1, 1999, and shall become
3 part of that department's pilot project in accordance with its
4 long-range plan. The State Department of Social Services may
5 charge a fee for the costs of processing a set of live-scan
6 fingerprints.

7 (2) The Department of Justice shall provide a report to the
8 Senate and Assembly fiscal committees, the Assembly Human
9 Services Committee, and to the Senate Health and Human
10 Services Committee by April 15, 1999, regarding the completion
11 of backlogged criminal record clearance requests for all facilities
12 licensed by the State Department of Social Services and the
13 progress on implementing the automated live-scan processing
14 system in the two district offices pursuant to paragraph (1).

15 (l) Amendments to this section made in the 1999 portion of the
16 1999-2000 Regular Session shall be implemented commencing
17 60 days after the effective date of the act amending this section in
18 the 1999 portion of the 1999-2000 Regular Session, except that
19 those provisions for the submission of fingerprints for searching
20 the records of the Federal Bureau of Investigation shall be
21 implemented 90 days after the effective date of that act.

22 *SEC. 8. Section 1568.09 of the Health and Safety Code is*
23 *amended to read:*

24 1568.09. It is the intent of the Legislature in enacting this
25 section to require the fingerprints of those individuals whose
26 contact with residents of residential care facilities for persons
27 with a chronic, life-threatening illness may pose a risk to the
28 residents' health and safety.

29 Therefore, the Legislature supports the use of the fingerprint
30 live-scan technology, as identified in the long-range plan of the
31 Department of Justice for fully automating the processing of
32 fingerprints and other data by the year 1999, otherwise known as
33 the California Crime Information Intelligence System (CAL-CII),
34 to be used for applicant fingerprints. It is the intent of the
35 Legislature, in enacting this section, to require the fingerprints of
36 those individuals whose contact with community care clients
37 may pose a risk to the clients' health and safety. *An individual*
38 *shall be required to obtain either a criminal record clearance*
39 *from the Department of Justice or a criminal record exemption*
40 *from the State Department of Social Services before his or her*

1 *initial presence in a residential care facility for persons with*
2 *chronic, life-threatening illness.*

3 (a) (1) Before issuing a license to any person or persons to
4 operate or manage a residential care facility, the department shall
5 secure from an appropriate law enforcement agency a criminal
6 record to determine whether the applicant or any other person
7 specified in subdivision (b) has ever been convicted of a crime
8 other than a minor traffic violation or arrested for any crime
9 specified in Section 290 of the Penal Code, for violating Section
10 245 or 273.5, subdivision (b) of Section 273a or, prior to January
11 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for
12 any crime for which the department cannot grant an exemption if
13 the person was convicted and the person has not been exonerated.

14 (2) The criminal history information shall include the full
15 criminal record if any, of those persons, and subsequent arrest
16 information pursuant to Section 11105.2 of the Penal Code.

17 (3) The following shall apply to the criminal record
18 information:

19 (A) If the State Department of Social Services finds that the
20 applicant or any other person specified in subdivision (b) has
21 been convicted of a crime, other than a minor traffic violation,
22 the application shall be denied, unless the director grants an
23 exemption pursuant to subdivision (f).

24 (B) If the State Department of Social Services finds that the
25 applicant, or any other person specified in subdivision (b) is
26 awaiting trial for a crime other than a minor traffic violation, the
27 State Department of Social Services may cease processing the
28 application until the conclusion of the trial.

29 (C) If no criminal record information has been recorded, the
30 Department of Justice shall provide the applicant and the State
31 Department of Social Services with a statement of that fact.

32 (D) If the State Department of Social Services finds after
33 licensure that the licensee, or any other person specified in
34 paragraph (2) of subdivision (b), has been convicted of a crime
35 other than a minor traffic violation, the license may be revoked,
36 unless the director grants an exemption pursuant to subdivision
37 (f).

38 (E) An applicant and any other person specified in subdivision
39 (b) shall submit to the Department of Justice a second set of
40 fingerprints for the purpose of searching the records of the

Federal Bureau of Investigation, in addition to the search required by this subdivision. If an applicant meets all other conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal history information for the applicant and persons listed in subdivision (b), the department may issue a license if the applicant and each person described by subdivision (b) has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure, the department determines that the licensee or person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to subdivision (a) of Section 1568.082. The department may also suspend the license pending an administrative hearing pursuant to subdivision (b) of Section 1568.082.

(F) An applicant and any other person specified in subdivision (b), as a part of the background clearance process, shall sign a declaration under penalty of perjury disclosing whether or not the person has any prior criminal convictions or arrests, or has had any prior disciplinary action taken against him or her by any federal, state, or local governmental agency.

(b) In addition to the applicant, the provisions of this section shall be applicable to criminal convictions of the following persons:

(1) Adults responsible for administration or direct supervision of staff of the facility.

(2) Any person, other than a resident, residing in the facility.

(3) Any person who provides resident assistance in dressing, grooming, bathing, or personal hygiene. Any nurse assistant or home health aide meeting the requirements of Section 1338.5 or 1736.6, respectively, who is not employed, retained, or contracted by the licensee, and who has been certified or recertified on or after July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A certified nurse assistant and certified home health aide who will be providing client assistance and who falls under this exemption shall provide one copy of his or her current certification, prior to providing care, to the residential care facility for persons with chronic, life-threatening illness. The facility shall maintain the copy of the certification on file as long as care is being provided

1 by the certified nurse assistant or certified home health aide at the
2 facility. Nothing in this paragraph restricts the right of the
3 department to exclude a certified nurse assistant or certified
4 home health aide from a licensed residential care facility for
5 persons with chronic, life-threatening illness pursuant to Section
6 1568.092.

7 (4) (A) Any staff person, volunteer, or employee who has
8 contact with the residents.

9 (B) A volunteer shall be exempt from the requirements of this
10 subdivision if he or she is a relative, significant other, or close
11 friend of a client receiving care in the facility and the volunteer
12 does not provide direct care and supervision of residents. A
13 volunteer who provides direct care and supervision shall be
14 exempt if the volunteer is a resident's spouse, significant other,
15 close friend, or family member and provides direct care and
16 supervision to that resident only at the request of the resident.
17 The department may define in regulations persons similar to
18 those described in this subparagraph who may be exempt from
19 the requirements of this subdivision.

20 (5) If the applicant is a firm, partnership, association, or
21 corporation, the chief executive officer or other person serving in
22 that capacity.

23 (6) Additional officers of the governing body of the applicant,
24 or other persons with a financial interest in the applicant, as
25 determined necessary by the department by regulation. The
26 criteria used in the development of these regulations shall be
27 based on the person's capability to exercise substantial influence
28 over the operation of the facility.

29 (c) (1) (A) Subsequent to initial licensure, any person
30 specified in subdivision (b) and not exempted from fingerprinting
31 shall, as a condition to employment, residence, or presence in a
32 residential care facility, be fingerprinted and sign a declaration
33 under penalty of perjury regarding any prior criminal
34 convictions. The licensee shall submit these fingerprints to the
35 Department of Justice, along with a second set of fingerprints, for
36 the purpose of searching the records of the Federal Bureau of
37 Investigation, or to comply with paragraph (1) of subdivision (g),
38 prior to the person's employment, residence, or initial presence in
39 the residential care facility.

(B) These fingerprints shall be on a card provided by the State Department of Social Services for the purpose of obtaining a permanent set of fingerprints and submitted to the Department of Justice by the licensee or sent by electronic transmission in a manner approved by the State Department of Social Services. A licensee's failure to submit fingerprints to the Department of Justice, or to comply with paragraph (1) of subdivision (g), as required in this section, shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars (\$100) per violation, per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars (\$100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1568.082. The State Department of Social Services may assess civil penalties for continued violations as allowed in Section 1568.0822. The fingerprints shall then be submitted to the State Department of Social Services for processing. The licensee shall maintain and make available for inspection documentation of the individual's clearance or exemption.

(2) A violation of the regulations adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars (\$100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars (\$100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1568.082. The department may assess civil penalties for continued violations as permitted by Section 1568.0822.

(3) Within 14 calendar days of the receipt of the fingerprints, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided for in this subdivision. If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 14 calendar days of receipt of the fingerprints. If new fingerprints are required for processing, the Department of

1 Justice shall, within 14 calendar days from the date of receipt of
2 the fingerprints, notify the licensee that the fingerprints were
3 illegible. When live-scan technology is operational, as defined in
4 Section 1522.04, the Department of Justice shall notify the
5 department, as required by that section, and shall notify the
6 licensee by mail within 14 days of electronic transmission of the
7 fingerprints to the Department of Justice, if the person has no
8 criminal history record.

9 (4) Except for persons specified in paragraph (2) of
10 subdivision (b), the licensee shall endeavor to ascertain the
11 previous employment history of persons required to be
12 fingerprinted under this subdivision. If it is determined by the
13 State Department of Social Services, on the basis of the
14 fingerprints submitted to the Department of Justice, that the
15 person has been convicted of a sex offense against a minor, an
16 offense specified in Section 243.4, 273a, 273d, 273g, or 368 of
17 the Penal Code, or a felony, the department shall notify the
18 licensee to act immediately to terminate the person's
19 employment, remove the person from the residential care facility,
20 or bar the person from entering the residential care facility. The
21 department may subsequently grant an exemption pursuant to
22 subdivision (f). If the conviction was for another crime, except a
23 minor traffic violation, the licensee shall, upon notification by the
24 department, act immediately to either (1) terminate the person's
25 employment, remove the person from the residential care facility,
26 or bar the person from entering the residential care facility; or (2)
27 seek an exemption pursuant to subdivision (f). The department
28 shall determine if the person shall be allowed to remain in the
29 facility until a decision on the exemption is rendered. A
30 licensee's failure to comply with the department's prohibition of
31 employment, contact with clients, or presence in the facility as
32 required by this paragraph shall result in a citation of deficiency
33 and an immediate assessment of civil penalties by the department
34 against the licensee, in the amount of one hundred dollars (\$100)
35 per violation, per day for a maximum of five days, unless the
36 violation is a second or subsequent violation within a 12-month
37 period in which case the civil penalties shall be in the amount of
38 one hundred dollars (\$100) per violation for a maximum of 30
39 days, and shall be grounds for disciplining the licensee pursuant
40 to Section 1568.082.

1 (5) The department may issue an exemption on its own motion
2 pursuant to subdivision (f) if the person's criminal history
3 indicates that the person is of good character based on the age,
4 seriousness, and frequency of the conviction or convictions. The
5 department, in consultation with interested parties, shall develop
6 regulations to establish the criteria to grant an exemption
7 pursuant to this paragraph.

8 (6) Concurrently with notifying the licensee pursuant to
9 paragraph (4), the department shall notify the affected individual
10 of his or her right to seek an exemption pursuant to subdivision
11 (f). The individual may seek an exemption only if the licensee
12 terminates the person's employment or removes the person from
13 the facility after receiving notice from the department pursuant to
14 paragraph (4).

15 (d) (1) For purposes of this section or any other provision of
16 this chapter, a conviction means a plea or verdict of guilty or a
17 conviction following a plea of nolo contendere. Any action that
18 the department is permitted to take following the establishment
19 of a conviction may be taken when the time for appeal has
20 elapsed, when the judgment of conviction has been affirmed on
21 appeal, or when an order granting probation is made suspending
22 the imposition of the sentence, notwithstanding a subsequent
23 order pursuant to Sections 1203.4 and 1203.4a of the Penal Code
24 permitting that person to withdraw his or her plea of guilty and to
25 enter a plea of not guilty, setting aside the verdict of guilty, or
26 dismissing the accusation, information, or indictment. For
27 purposes of this chapter, the record of a conviction, or a copy
28 thereof certified by the clerk of the court or by a judge of the
29 court in which the conviction occurred, shall be conclusive
30 evidence of the conviction. For purposes of this section or any
31 other provision of this chapter, the arrest disposition report
32 certified by the Department of Justice, or documents admissible
33 in a criminal action pursuant to Section 969b of the Penal Code,
34 shall be prima facie evidence of the conviction, notwithstanding
35 any other provision of law prohibiting the admission of these
36 documents in a civil or administrative action.

37 (2) For purposes of this section or any other provision of this
38 chapter, the department shall consider criminal convictions from
39 another state or federal court as if the criminal offense was
40 committed in this state.

1 (e) The State Department of Social Services may not use a
2 record of arrest to deny, revoke, or terminate any application,
3 license, employment, or residence unless the department
4 investigates the incident and secures evidence, whether or not
5 related to the incident of arrest, that is admissible in an
6 administrative hearing to establish conduct by the person that
7 may pose a risk to the health and safety of any person who is or
8 may become a client. The State Department of Social Services is
9 authorized to obtain any arrest or conviction records or reports
10 from any law enforcement agency as necessary to the
11 performance of its duties to inspect, license, and investigate
12 community care facilities and individuals associated with a
13 community care facility.

14 (f) (1) After review of the record, the director may grant an
15 exemption from disqualification for a license as specified in
16 paragraphs (1) and (4) of subdivision (a), or for employment,
17 residence, or presence in a residential care facility as specified in
18 paragraphs (4), (5), and (6) of subdivision (c) if the director has
19 substantial and convincing evidence to support a reasonable
20 belief that the applicant and the person convicted of the crime, if
21 other than the applicant, are of such good character as to justify
22 issuance of the license or special permit or granting an exemption
23 for purposes of subdivision (c). However, an exemption may not
24 be granted pursuant to this subdivision if the conviction was for
25 any of the following offenses:

26 (A) An offense specified in Section 220, 243.4, or 264.1,
27 subdivision (a) of Section 273a or, prior to January 1, 1994,
28 paragraph (1) of Section 273a, Section 273d, 288, or 289,
29 subdivision (a) of Section 290, or Section 368 of the Penal Code,
30 or was a conviction of another crime against an individual
31 specified in subdivision (c) of Section 667.5 of the Penal Code.

32 (B) A felony offense specified in Section 729 of the Business
33 and Professional Code or Section 206 or 215, subdivision (a) of
34 Section 347, subdivision (b) of Section 417, or subdivision (a) of
35 Section 451 of the Penal Code.

36 (2) The department may not prohibit a person from being
37 employed or having contact with clients in a facility on the basis
38 of a denied criminal record exemption request or arrest
39 information unless the department complies with the
40 requirements of Section 1568.092. *Notwithstanding*

1 *subparagraph (B) of paragraph (1) of, and subparagraph (B) of*
2 *paragraph (2) of, subdivision (h) of Section 1568.092, if a*
3 *request for an exemption has been denied, or an exemption has*
4 *been revoked, the individual shall be prohibited for a period of*
5 *two years from seeking reinstatement or an exemption, unless the*
6 *individual has been convicted of a crime for which no exemption*
7 *can be granted. If a request for an exemption has been denied*
8 *based on conviction for a crime for which no exemption may be*
9 *granted, the individual shall be excluded for the remainder of his*
10 *or her life.*

11 (g) (1) For purposes of compliance with this section, the
12 department may permit an individual to transfer a current
13 criminal record clearance, as defined in subdivision (a), from one
14 facility to another, as long as the criminal record clearance has
15 been processed through a state licensing district office, and is
16 being transferred to another facility licensed by a state licensing
17 district office. The request shall be in writing to the department,
18 and shall include a copy of the person's driver's license or valid
19 identification card issued by the Department of Motor Vehicles,
20 or a valid photo identification issued by another state or the
21 United States government if the person is not a California
22 resident. Upon request of the licensee, who shall enclose a
23 self-addressed stamped envelope for this purpose, the department
24 shall verify whether the individual has a clearance that can be
25 transferred.

26 (2) The State Department of Social Services shall hold
27 criminal record clearances in its active files for a minimum of
28 two years after an employee is no longer employed at a licensed
29 facility in order for the criminal record clearance to be
30 transferred.

31 (h) If a licensee or facility is required by law to deny
32 employment or to terminate employment of any employee based
33 on written notification from the state department that the
34 employee has a prior criminal conviction or is determined
35 unsuitable for employment under Section 1568.092, the licensee
36 or facility shall not incur civil liability or unemployment
37 insurance liability as a result of that denial or termination.

38 (i) (1) The Department of Justice shall charge a fee sufficient
39 to cover its cost in providing services to comply with the 14-day

1 requirement contained in subdivision (c) for provision to the
2 department of criminal record information.

3 (2) Paragraph (1) shall cease to be implemented when the
4 department adopts emergency regulations pursuant to Section
5 1522.04, and shall become inoperative when permanent
6 regulations are adopted under that section.

7 (j) Amendments to the provisions of this section made in the
8 1998 calendar year shall be implemented commencing 60 days
9 after the effective date of the act amending this section in the
10 1998 calendar year, except those provisions for the submission of
11 fingerprints for searching the records of the Federal Bureau of
12 Investigation, which shall be implemented commencing January
13 1, 1999.

14 *SEC. 9. Section 1569.17 of the Health and Safety Code is*
15 *amended to read:*

16 1569.17. The Legislature recognizes the need to generate
17 timely and accurate positive fingerprint identification of
18 applicants as a condition of issuing licenses, permits, or
19 certificates of approval for persons to operate or provide direct
20 care services in a residential care facility for the elderly. The
21 Legislature supports the use of the fingerprint live-scan
22 technology, as identified in the long-range plan of the
23 Department of Justice for fully automating the processing of
24 fingerprints and other data by the year 1999. It is the intent of the
25 Legislature in enacting this section to require the fingerprints of
26 those individuals whose contact with clients of residential care
27 facilities for the elderly may pose a risk to the clients' health and
28 safety. *An individual shall be required to obtain either a criminal*
29 *record clearance from the Department of Justice or a criminal*
30 *record exemption from the State Department of Social Services*
31 *before his or her initial presence in a residential care facility for*
32 *the elderly.*

33 (a) (1) Before issuing a license to any person or persons to
34 operate or manage a residential care facility for the elderly, the
35 department shall secure from an appropriate law enforcement
36 agency a criminal record to determine whether the applicant or
37 any other person specified in subdivision (b) has ever been
38 convicted of a crime other than a minor traffic violation or
39 arrested for any crime specified in Section 290 of the Penal
40 Code, for violating Section 245 or 273.5, subdivision (b) of

1 Section 273a or, prior to January 1, 1994, paragraph (2) of
2 Section 273a of the Penal Code, or for any crime for which the
3 department cannot grant an exemption if the person was
4 convicted and the person has not been exonerated.

5 (2) The criminal history information shall include the full
6 criminal record, if any, of those persons, and subsequent arrest
7 information pursuant to Section 11105.2 of the Penal Code.

8 (3) The following shall apply to the criminal record
9 information:

10 (A) If the State Department of Social Services finds that the
11 applicant or any other person specified in subdivision (b) has
12 been convicted of a crime, other than a minor traffic violation,
13 the application shall be denied, unless the director grants an
14 exemption pursuant to subdivision (f).

15 (B) If the State Department of Social Services finds that the
16 applicant, or any other person specified in subdivision (b) is
17 awaiting trial for a crime other than a minor traffic violation, the
18 State Department of Social Services may cease processing the
19 application until the conclusion of the trial.

20 (C) If no criminal record information has been recorded, the
21 Department of Justice shall provide the applicant and the State
22 Department of Social Services with a statement of that fact.

23 (D) If the State Department of Social Services finds after
24 licensure that the licensee, or any other person specified in
25 paragraph (2) of subdivision (b), has been convicted of a crime
26 other than a minor traffic violation, the license may be revoked,
27 unless the director grants an exemption pursuant to subdivision
28 (f).

29 (E) An applicant and any other person specified in subdivision
30 (b) shall submit a second set of fingerprints to the Department of
31 Justice, for the purpose of searching the records of the Federal
32 Bureau of Investigation, in addition to the search required by
33 subdivision (a). If an applicant meets all other conditions for
34 licensure, except receipt of the Federal Bureau of Investigation's
35 criminal history information for the applicant and persons listed
36 in subdivision (b), the department may issue a license if the
37 applicant and each person described by subdivision (b) has
38 signed and submitted a statement that he or she has never been
39 convicted of a crime in the United States, other than a traffic
40 infraction as defined in paragraph (1) of subdivision (a) of

1 Section 42001 of the Vehicle Code. If, after licensure, the
2 department determines that the licensee or person specified in
3 subdivision (b) has a criminal record, the license may be revoked
4 pursuant to Section 1569.50. The department may also suspend
5 the license pending an administrative hearing pursuant to
6 Sections 1569.50 and 1569.51.

7 *(F) An applicant and any other person specified in subdivision*
8 *(b), as a part of the background clearance process, shall sign a*
9 *declaration under penalty of perjury disclosing whether or not*
10 *the person has any prior criminal convictions or arrests, or has*
11 *had any prior disciplinary action taken against him or her by any*
12 *federal, state, or local governmental agency.*

13 (b) In addition to the applicant, the provisions of this section
14 shall apply to criminal convictions of the following persons:

15 (1) (A) Adults responsible for administration or direct
16 supervision of staff.

17 (B) Any person, other than a client, residing in the facility.
18 Residents of unlicensed independent senior housing facilities that
19 are located in contiguous buildings on the same property as a
20 residential care facility for the elderly shall be exempt from these
21 requirements.

22 (C) Any person who provides client assistance in dressing,
23 grooming, bathing, or personal hygiene. Any nurse assistant or
24 home health aide meeting the requirements of Section 1338.5 or
25 1736.6, respectively, who is not employed, retained, or
26 contracted by the licensee, and who has been certified or
27 recertified on or after July 1, 1998, shall be deemed to meet the
28 criminal record clearance requirements of this section. A certified
29 nurse assistant and certified home health aide who will be
30 providing client assistance and who falls under this exemption
31 shall provide one copy of his or her current certification, prior to
32 providing care, to the residential care facility for the elderly. The
33 facility shall maintain the copy of the certification on file as long
34 as the care is being provided by the certified nurse assistant or
35 certified home health aide at the facility. Nothing in this
36 paragraph restricts the right of the department to exclude a
37 certified nurse assistant or certified home health aide from a
38 licensed residential care facility for the elderly pursuant to
39 Section 1569.58.

1 (D) Any staff person, volunteer, or employee who has contact
2 with the clients.

3 (E) If the applicant is a firm, partnership, association, or
4 corporation, the chief executive officer or other person serving in
5 a similar capacity.

6 (F) Additional officers of the governing body of the applicant
7 or other persons with a financial interest in the applicant, as
8 determined necessary by the department by regulation. The
9 criteria used in the development of these regulations shall be
10 based on the person's capability to exercise substantial influence
11 over the operation of the facility.

12 (2) The following persons are exempt from requirements
13 applicable under paragraph (1):

14 ~~(A)~~A

15 (A) A spouse, relative, significant other, or close friend of a
16 client shall be exempt if this person is visiting the client or
17 provides direct care and supervision to that client only.

18 (B) A volunteer to whom all of the following apply:

19 (i) The volunteer is at the facility during normal waking hours.

20 (ii) The volunteer is directly supervised by the licensee or a
21 facility employee with a criminal record clearance or exemption.

22 (iii) The volunteer spends no more than 16 hours per week at
23 the facility.

24 (iv) The volunteer does not provide clients with assistance in
25 dressing, grooming, bathing, or personal hygiene.

26 (v) The volunteer is not left alone with clients in care.

27 (C) A third-party contractor retained by the facility if the
28 contractor is not left alone with clients in care.

29 (D) A third-party contractor or other business professional
30 retained by a client and at the facility at the request or by
31 permission of that client. These individuals may not be left alone
32 with other clients.

33 (E) Licensed or certified medical professionals are exempt
34 from fingerprint and criminal background check requirements
35 imposed by community care licensing. This exemption does not
36 apply to a person who is a community care facility licensee or an
37 employee of the facility.

38 (F) Employees of licensed home health agencies and members
39 of licensed hospice interdisciplinary teams who have contact
40 with a resident of a residential care facility at the request of the

1 resident or resident's legal decisionmaker are exempt from
2 fingerprint and criminal background check requirements imposed
3 by community care licensing. This exemption does not apply to a
4 person who is a community care facility licensee or an employee
5 of the facility.

6 (G) Clergy and other spiritual caregivers who are performing
7 services in common areas of the residential care facility, or who
8 are advising an individual resident at the request of, or with
9 permission of, the resident, are exempt from fingerprint and
10 criminal background check requirements imposed by community
11 care licensing. This exemption does not apply to a person who is
12 a community care facility licensee or an employee of the facility.

13 (H) Any person similar to those described in this subdivision,
14 as defined by the department in regulations.

15 (I) Nothing in this paragraph shall prevent a licensee from
16 requiring a criminal record clearance of any individual exempt
17 from the requirements of this section, provided that the
18 individual has client contact.

19 (c) (1) (A) Subsequent to initial licensure, any person
20 required to be fingerprinted pursuant to subdivision (b) shall, as a
21 condition to employment, residence, or presence in a residential
22 facility for the elderly, be fingerprinted and sign a declaration
23 under penalty of perjury regarding any prior criminal
24 convictions. The licensee shall submit these fingerprints, along
25 with a second set of fingerprints for the purpose of searching the
26 records of the Federal Bureau of Investigation, to the Department
27 of Justice, or to comply with paragraph (1) of subdivision (g)
28 prior to the person's employment, residence, or initial presence in
29 the residential care facility for the elderly.

30 (B) These fingerprints shall be on a fingerprint card provided
31 by the State Department of Social Services, or sent by electronic
32 transmission in a manner approved by the State Department of
33 Social Services and the Department of Justice and submitted to
34 the Department of Justice by the licensee. A licensee's failure to
35 submit fingerprints to the Department of Justice, or to comply
36 with paragraph (1) of subdivision (g), as required in this section,
37 shall result in the citation of a deficiency and an immediate
38 assessment of civil penalties in the amount of one hundred
39 dollars (\$100) per violation, per day for a maximum of five days,
40 unless the violation is a second or subsequent violation within a

1 12-month period in which case the civil penalties shall be in the
2 amount of one hundred dollars (\$100) per violation for a
3 maximum of 30 days, and shall be grounds for disciplining the
4 licensee pursuant to Section 1569.50. The State Department of
5 Social Services may assess civil penalties for continued
6 violations as permitted by Section 1569.49. The licensee shall
7 then submit these fingerprints to the State Department of Social
8 Services for processing. Documentation of the individual's
9 clearance or exemption shall be maintained by the licensee and
10 be available for inspection. When live-scan technology is
11 operational, as defined in Section 1522.04, the Department of
12 Justice shall notify the department, as required by that section,
13 and notify the licensee by mail within 14 days of electronic
14 transmission of the fingerprints to the Department of Justice, if
15 the person has no criminal record. A violation of the regulations
16 adopted pursuant to Section 1522.04 shall result in the citation of
17 a deficiency and an immediate assessment of civil penalties in
18 the amount of one hundred dollars (\$100) per violation, per day
19 for a maximum of five days, unless the violation is a second or
20 subsequent violation within a 12-month period in which case the
21 civil penalties shall be in the amount of one hundred dollars
22 (\$100) per violation for a maximum of 30 days, and shall be
23 grounds for disciplining the licensee pursuant to Section 1569.50.
24 The department may assess civil penalties for continued
25 violations as permitted by Section 1569.49.

26 (2) Within 14 calendar days of the receipt of the fingerprints,
27 the Department of Justice shall notify the State Department of
28 Social Services of the criminal record information, as provided
29 for in this subdivision. If no criminal record information has been
30 recorded, the Department of Justice shall provide the licensee
31 and the State Department of Social Services with a statement of
32 that fact within 14 calendar days of receipt of the fingerprints. If
33 new fingerprints are required for processing, the Department of
34 Justice shall, within 14 calendar days from the date of receipt of
35 the fingerprints, notify the licensee that the fingerprints were
36 illegible.

37 (3) Except for persons specified in paragraph (2) of
38 subdivision (b), the licensee shall endeavor to ascertain the
39 previous employment history of persons required to be
40 fingerprinted under this subdivision. If the State Department of

1 Social Services determines, on the basis of the fingerprints
2 submitted to the Department of Justice, that the person has been
3 convicted of a sex offense against a minor, an offense specified
4 in Section 243.4, 273a, 273d, 273g, or 368 of the Penal Code, or
5 a felony, the State Department of Social Services shall notify the
6 licensee in writing within 15 calendar days of the receipt of the
7 notification from the Department of Justice to act immediately to
8 terminate the person's employment, remove the person from the
9 residential care facility for the elderly, or bar the person from
10 entering the residential care facility for the elderly. The State
11 Department of Social Services may subsequently grant an
12 exemption pursuant to subdivision (f). If the conviction was for
13 another crime, except a minor traffic violation, the licensee shall,
14 upon notification by the State Department of Social Services, act
15 immediately to either (1) terminate the person's employment,
16 remove the person from the residential care facility for the
17 elderly, or bar the person from entering the residential care
18 facility for the elderly or (2) seek an exemption pursuant to
19 subdivision (f). The department shall determine if the person
20 shall be allowed to remain in the facility until a decision on the
21 exemption is rendered by the department. A licensee's failure to
22 comply with the department's prohibition of employment,
23 contact with clients, or presence in the facility as required by this
24 paragraph shall result in a citation of deficiency and an
25 immediate assessment of civil penalties by the department
26 against the licensee, in the amount of one hundred dollars (\$100)
27 per violation, per day for a maximum of five days, unless the
28 violation is a second or subsequent violation within a 12-month
29 period in which case the civil penalties shall be in the amount of
30 one hundred dollars (\$100) per violation for a maximum of 30
31 days, and shall be grounds for disciplining the licensee pursuant
32 to Section 1569.50.

33 (4) The department may issue an exemption on its own motion
34 pursuant to subdivision (f) if the person's criminal history
35 indicates that the person is of good character based on the age,
36 seriousness, and frequency of the conviction or convictions. The
37 department, in consultation with interested parties, shall develop
38 regulations to establish the criteria to grant an exemption
39 pursuant to this paragraph.

1 (5) Concurrently with notifying the licensee pursuant to
2 paragraph (4), the department shall notify the affected individual
3 of his or her right to seek an exemption pursuant to subdivision
4 (f). The individual may seek an exemption only if the licensee
5 terminates the person's employment or removes the person from
6 the facility after receiving notice from the department pursuant to
7 paragraph (4).

8 (d) (1) For purposes of this section or any other provision of
9 this chapter, a conviction means a plea or verdict of guilty or a
10 conviction following a plea of nolo contendere. Any action that
11 the department is permitted to take following the establishment
12 of a conviction may be taken when the time for appeal has
13 elapsed, when the judgment of conviction has been affirmed on
14 appeal or when an order granting probation is made suspending
15 the imposition of the sentence, notwithstanding a subsequent
16 order pursuant to the provisions of Sections 1203.4 and 1203.4a
17 of the Penal Code permitting a person to withdraw his or her plea
18 of guilty and to enter a plea of not guilty, or setting aside the
19 verdict of guilty, or dismissing the accusation, information, or
20 indictment. For purposes of this section or any other provision of
21 this chapter, the record of a conviction, or a copy thereof certified
22 by the clerk of the court or by a judge of the court in which the
23 conviction occurred, shall be conclusive evidence of the
24 conviction. For purposes of this section or any other provision of
25 this chapter, the arrest disposition report certified by the
26 Department of Justice or documents admissible in a criminal
27 action pursuant to Section 969b of the Penal Code shall be prima
28 facie evidence of the conviction, notwithstanding any other
29 provision of law prohibiting the admission of these documents in
30 a civil or administrative action.

31 (2) For purposes of this section or any other provision of this
32 chapter, the department shall consider criminal convictions from
33 another state or federal court as if the criminal offense was
34 committed in this state.

35 (e) The State Department of Social Services may not use a
36 record of arrest to deny, revoke, or terminate any application,
37 license, employment, or residence unless the department
38 investigates the incident and secures evidence, whether or not
39 related to the incident of arrest, that is admissible in an
40 administrative hearing to establish conduct by the person that

1 may pose a risk to the health and safety of any person who is or
2 may become a client. The State Department of Social Services is
3 authorized to obtain any arrest or conviction records or reports
4 from any law enforcement agency as necessary to the
5 performance of its duties to inspect, license, and investigate
6 community care facilities and individuals associated with a
7 community care facility.

8 (f) (1) After review of the record, the director may grant an
9 exemption from disqualification for a license as specified in
10 paragraphs (1) and (4) of subdivision (a), or for employment,
11 residence, or presence in a residential care facility for the elderly
12 as specified in paragraphs (4), (5), and (6) of subdivision (c) if
13 the director has substantial and convincing evidence to support a
14 reasonable belief that the applicant and the person convicted of
15 the crime, if other than the applicant, are of such good character
16 as to justify issuance of the license or special permit or granting
17 an exemption for purposes of subdivision (c). However, an
18 exemption may not be granted pursuant to this subdivision if the
19 conviction was for any of the following offenses:

20 (A) An offense specified in Section 220, 243.4, or 264.1,
21 subdivision (a) of Section 273a or, prior to January 1, 1994,
22 paragraph (1) of Section 273a, Section 273d, 288, or 289,
23 subdivision (a) of Section 290, or Section 368 of the Penal Code,
24 or was a conviction of another crime against an individual
25 specified in subdivision (c) of Section 667.5 of the Penal Code.

26 (B) A felony offense specified in Section 729 of the Business
27 and Professions Code or Section 206 or 215, subdivision (a) of
28 Section 347, subdivision (b) of Section 417, or subdivision (a) of
29 Section 451 of the Penal Code.

30 (2) The director shall notify in writing the licensee or the
31 applicant of his or her decision within 60 days of receipt of all
32 information from the applicant and other sources determined
33 necessary by the director for the rendering of a decision pursuant
34 to this subdivision.

35 (3) The department may not prohibit a person from being
36 employed or having contact with clients in a facility on the basis
37 of a denied criminal record exemption request or arrest
38 information unless the department complies with the
39 requirements of Section 1569.58. *Notwithstanding subparagraph*
40 *(B) of paragraph (1) of, and subparagraph (B) of paragraph (2)*

1 of, subdivision (h) of Section 1569.58, if a request for an
2 exemption has been denied, or an exemption has been revoked,
3 the individual shall be prohibited for a period of two years from
4 seeking reinstatement or an exemption, unless the individual has
5 been convicted of a crime for which no exemption can be
6 granted. If a request for an exemption has been denied based on
7 conviction for a crime for which no exemption may be granted,
8 the individual shall be excluded for the remainder of his or her
9 life.

10 (g) (1) For purposes of compliance with this section, the
11 department may permit an individual to transfer a current
12 criminal record clearance, as defined in subdivision (a), from one
13 facility to another, as long as the criminal record clearance has
14 been processed through a state licensing district office, and is
15 being transferred to another facility licensed by a state licensing
16 district office. The request shall be submitted in writing to the
17 department, and shall include a copy of the person's driver's
18 license or valid identification card issued by the Department of
19 Motor Vehicles, or a valid photo identification issued by another
20 state or the United States government if the person is not a
21 California resident. Upon request of the licensee, who shall
22 enclose a self-addressed stamped envelope for this purpose, the
23 department shall verify whether the individual has a clearance
24 that can be transferred.

25 (2) The State Department of Social Services shall hold
26 criminal record clearances in its active files for a minimum of
27 two years after an employee is no longer employed at a licensed
28 facility in order for the criminal record clearances to be
29 transferred under this section.

30 (h) If a licensee or facility is required by law to deny
31 employment or to terminate employment of any employee based
32 on written notification from the department that the employee has
33 a prior criminal conviction or is determined unsuitable for
34 employment under Section 1569.58, the licensee or facility shall
35 not incur civil liability or unemployment insurance liability as a
36 result of that denial or termination.

37 (i) Amendments to the provisions of this section made in the
38 1998 calendar year shall be implemented commencing 60 days
39 after the effective date of the act amending this section in the
40 1998 calendar year, except those provisions for the submission of

1 fingerprints for searching the records of the Federal Bureau of
2 Investigation, which shall be implemented commencing on
3 January 1, 1999.

4 *SEC. 10. Section 1575.7 of the Health and Safety Code is*
5 *amended to read:*

6 1575.7. (a) (1) The State Department of Health Services,
7 prior to issuing a new license, shall ~~secure from an appropriate~~
8 ~~law enforcement agency records of any criminal activity, other~~
9 ~~than minor traffic violations,~~ *of obtain a criminal clearance for*
10 *the administrator, program director, and fiscal officer of the*
11 *proposed adult day health care center. The state department shall*
12 *obtain the criminal records clearances each time these positions*
13 *are to be filled. These criminal record clearances, in accordance*
14 *with subdivisions (b) and (c), shall be completed prior to direct*
15 *contact with residents.* ~~A~~

16 (2) *A criminal record clearance shall be complete when the*
17 *department has obtained the person's criminal record*
18 *information from the Department of Justice and has determined*
19 *that the person is not disqualified from engaging in the activity*
20 *for which clearance is required.*

21 (3) *The criminal record clearance shall require the*
22 *administrator, program director, and fiscal officer to submit*
23 *electronic fingerprint images to the department.*

24 (b) *A past conviction of any crime, especially any crime*
25 *involving misuse of funds or involving physical abuse shall, in*
26 *the discretion of the State Department of Health Services*
27 *department, be grounds for denial of the license, and shall be*
28 *grounds to prohibit the person from providing services in an*
29 *adult day health care center.*

30 **Suspension**

31 (c) *Suspension of the applicant from the Medi-Cal program or*
32 *prior violations of statutory provisions or regulations relating to*
33 *licensure of a health facility, community care facility, or clinic*
34 *shall also be grounds for a denial of licensure, where determined*
35 *by the state department to indicate a substantial probability that*
36 *the applicant will not comply with this chapter and regulations*
37 *adopted hereunder.*

38 **No**

39 (d) *No applicant which is licensed as a health facility,*
40 *community care facility, or clinic may be issued a license for an*

1 adult day health care center while there exists a subsisting,
2 uncorrected violation of the statutes or regulations relating to
3 such licensure.

4 *(e) A person subject to a criminal clearance under this section*
5 *that has been disqualified from engaging in the activity for which*
6 *clearance is required shall not reapply for licensure until two*
7 *years after notification of denial of the criminal clearance.*

8 *(f) The department shall develop procedures to ensure that*
9 *any licensee, direct care staff, or certificate holder for whom a*
10 *criminal record has been obtained pursuant to this section or*
11 *Section 1265.5 or 1736 shall not be required to obtain multiple*
12 *criminal record clearances.*

13 *SEC. 11. Section 1596.871 of the Health and Safety Code is*
14 *amended to read:*

15 1596.871. The Legislature recognizes the need to generate
16 timely and accurate positive fingerprint identification of
17 applicants as a condition of issuing licenses, permits, or
18 certificates of approval for persons to operate or provide direct
19 care services in a child care center or family child care home.
20 Therefore, the Legislature supports the use of the fingerprint
21 live-scan technology, as defined in the long-range plan of the
22 Department of Justice for fully automating the processing of
23 fingerprints and other data by the year 1999, otherwise known as
24 the California Crime Information Intelligence System (CAL-CII),
25 to be used for applicant fingerprints. It is the intent of the
26 Legislature in enacting this section to require the fingerprints of
27 those individuals whose contact with child day care facility
28 clients may pose a risk to the children's health and safety. *An*
29 *individual shall be required to obtain either a criminal record*
30 *clearance from the Department of Justice or a criminal record*
31 *exemption from the State Department of Social Services before*
32 *his or her initial presence in a child day care facility.*

33 (a) (1) Before issuing a license or special permit to any person
34 to operate or manage a day care facility, the department shall
35 secure from an appropriate law enforcement agency a criminal
36 record to determine whether the applicant or any other person
37 specified in subdivision (b) has ever been convicted of a crime
38 other than a minor traffic violation or arrested for any crime
39 specified in Section 290 of the Penal Code, for violating Section
40 245 or 273.5, subdivision (b) of Section 273a or, prior to January

1 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for
2 any crime for which the department cannot grant an exemption if
3 the person was convicted and the person has not been exonerated.

4 (2) The criminal history information shall include the full
5 criminal record, if any, of those persons, and subsequent arrest
6 information pursuant to Section 11105.2 of the Penal Code.

7 (3) Except during the 2003-04, 2004-05, and 2005-06 fiscal
8 years, neither the Department of Justice nor the department may
9 charge a fee for the fingerprinting of an applicant who will serve
10 six or fewer children or any family day care applicant for a
11 license, or for obtaining a criminal record of an applicant
12 pursuant to this section.

13 (4) The following shall apply to the criminal record
14 information:

15 (A) If the State Department of Social Services finds that the
16 applicant or any other person specified in subdivision (b) has
17 been convicted of a crime, other than a minor traffic violation,
18 the application shall be denied, unless the director grants an
19 exemption pursuant to subdivision (f).

20 (B) If the State Department of Social Services finds that the
21 applicant, or any other person specified in subdivision (b), is
22 awaiting trial for a crime other than a minor traffic violation, the
23 State Department of Social Services may cease processing the
24 application until the conclusion of the trial.

25 (C) If no criminal record information has been recorded, the
26 Department of Justice shall provide the applicant and the State
27 Department of Social Services with a statement of that fact.

28 (D) If the State Department of Social Services finds after
29 licensure that the licensee, or any other person specified in
30 paragraph (2) of subdivision (b), has been convicted of a crime
31 other than a minor traffic violation, the license may be revoked,
32 unless the director grants an exemption pursuant to subdivision
33 (f).

34 (E) An applicant and any other person specified in subdivision
35 (b) shall submit a second set of fingerprints to the Department of
36 Justice, for the purpose of searching the records of the Federal
37 Bureau of Investigation, in addition to the search required by
38 subdivision (a). If an applicant meets all other conditions for
39 licensure, except receipt of the Federal Bureau of Investigation's
40 criminal history information for the applicant and persons listed

1 in subdivision (b), the department may issue a license if the
2 applicant and each person described by subdivision (b) has
3 signed and submitted a statement that he or she has never been
4 convicted of a crime in the United States, other than a traffic
5 infraction as defined in paragraph (1) of subdivision (a) of
6 Section 42001 of the Vehicle Code. If, after licensure, the
7 department determines that the licensee or person specified in
8 subdivision (b) has a criminal record, the license may be revoked
9 pursuant to Section 1596.885. The department may also suspend
10 the license pending an administrative hearing pursuant to Section
11 1596.886.

12 *(F) An applicant and any other person specified in subdivision*
13 *(b), as a part of the background clearance process, shall sign a*
14 *declaration under penalty of perjury disclosing whether or not*
15 *the person has any prior criminal convictions or arrests, or has*
16 *had any prior disciplinary action taken against him or her by any*
17 *federal, state, or local governmental agency.*

18 (b) (1) In addition to the applicant, this section shall be
19 applicable to criminal convictions of the following persons:

20 (A) Adults responsible for administration or direct supervision
21 of staff.

22 (B) Any person, other than a child, residing in the facility.

23 (C) Any person who provides care and supervision to the
24 children.

25 (D) Any staff person, volunteer, or employee who has contact
26 with the children.

27 (i) A volunteer providing time-limited specialized services
28 shall be exempt from the requirements of this subdivision if this
29 person is directly supervised by the licensee or a facility
30 employee with a criminal record clearance or exemption, the
31 volunteer spends no more than 16 hours per week at the facility,
32 and the volunteer is not left alone with children in care.

33 (ii) A student enrolled or participating at an accredited
34 educational institution shall be exempt from the requirements of
35 this subdivision if the student is directly supervised by the
36 licensee or a facility employee with a criminal record clearance
37 or exemption, the facility has an agreement with the educational
38 institution concerning the placement of the student, the student
39 spends no more than 16 hours per week at the facility, and the
40 student is not left alone with children in care.

1 (iii) A volunteer who is a relative, legal guardian, or foster
2 parent of a client in the facility shall be exempt from the
3 requirements of this subdivision.

4 (iv) A contracted repair person retained by the facility, if not
5 left alone with children in care, shall be exempt from the
6 requirements of this subdivision.

7 (v) Any person similar to those described in this subdivision,
8 as defined by the department in regulations.

9 (E) If the applicant is a firm, partnership, association, or
10 corporation, the chief executive officer, other person serving in
11 like capacity, or a person designated by the chief executive
12 officer as responsible for the operation of the facility, as
13 designated by the applicant agency.

14 (F) If the applicant is a local educational agency, the president
15 of the governing board, the school district superintendent, or a
16 person designated to administer the operation of the facility, as
17 designated by the local educational agency.

18 (G) Additional officers of the governing body of the applicant,
19 or other persons with a financial interest in the applicant, as
20 determined necessary by the department by regulation. The
21 criteria used in the development of these regulations shall be
22 based on the person's capability to exercise substantial influence
23 over the operation of the facility.

24 (H) This section does not apply to employees of child care and
25 development programs under contract with the State Department
26 of Education who have completed a criminal records clearance as
27 part of an application to the Commission on Teacher
28 Credentialing, and who possess a current credential or permit
29 issued by the commission, including employees of child care and
30 development programs that serve both children subsidized under,
31 and children not subsidized under, a State Department of
32 Education contract. The Commission on Teacher Credentialing
33 shall notify the department upon revocation of a current
34 credential or permit issued to an employee of a child care and
35 development program under contract with the State Department
36 of Education.

37 (I) This section does not apply to employees of a child care
38 and development program operated by a school district, county
39 office of education, or community college district under contract
40 with the State Department of Education who have completed a

1 criminal record clearance as a condition of employment. The
2 school district, county office of education, or community college
3 district upon receiving information that the status of an
4 employee's criminal record clearance has changed shall submit
5 that information to the department.

6 (2) Nothing in this subdivision shall prevent a licensee from
7 requiring a criminal record clearance of any individuals exempt
8 from the requirements under this subdivision.

9 (c) (1) (A) Subsequent to initial licensure, any person
10 specified in subdivision (b) and not exempted from fingerprinting
11 shall, as a condition to employment, residence, or presence in a
12 child day care facility be fingerprinted and sign a declaration
13 under penalty of perjury regarding any prior criminal conviction.
14 The licensee shall submit these fingerprints to the Department of
15 Justice, along with a second set of fingerprints for the purpose of
16 searching the records of the Federal Bureau of Investigation, or
17 to comply with paragraph (1) of subdivision (h), prior to the
18 person's employment, residence, or initial presence in the child
19 day care facility.

20 (B) These fingerprints shall be on a card provided by the State
21 Department of Social Services for the purpose of obtaining a
22 permanent set of fingerprints and submitted to the Department of
23 Justice by the licensee or sent by electronic transmission in a
24 manner approved by the State Department of Social Services. A
25 licensee's failure to submit fingerprints to the Department of
26 Justice, or to comply with paragraph (1) of subdivision (h), as
27 required in this section, shall result in the citation of a deficiency,
28 and an immediate assessment of civil penalties in the amount of
29 one hundred dollars (\$100) per violation, per day for a maximum
30 of five days, unless the violation is a second or subsequent
31 violation within a 12-month period in which case the civil
32 penalties shall be in the amount of one hundred dollars (\$100)
33 per violation for a maximum of 30 days, and shall be grounds for
34 disciplining the licensee pursuant to Section 1596.885 or Section
35 1596.886. The State Department of Social Services may assess
36 civil penalties for continued violations permitted by Sections
37 1596.99 and 1597.62. The fingerprints shall then be submitted to
38 the State Department of Social Services for processing. Within
39 14 calendar days of the receipt of the fingerprints, the
40 Department of Justice shall notify the State Department of Social

1 Services of the criminal record information, as provided in this
2 subdivision. If no criminal record information has been recorded,
3 the Department of Justice shall provide the licensee and the State
4 Department of Social Services with a statement of that fact
5 within 14 calendar days of receipt of the fingerprints. If new
6 fingerprints are required for processing, the Department of
7 Justice shall, within 14 calendar days from the date of receipt of
8 the fingerprints, notify the licensee that the fingerprints were
9 illegible.

10 (C) Documentation of the individual's clearance or exemption
11 shall be maintained by the licensee, and shall be available for
12 inspection. When live-scan technology is operational, as defined
13 in Section 1522.04, the Department of Justice shall notify the
14 department, as required by that section, and notify the licensee by
15 mail within 14 days of electronic transmission of the fingerprints
16 to the Department of Justice, if the person has no criminal record.
17 Any violation of the regulations adopted pursuant to Section
18 1522.04 shall result in the citation of a deficiency and an
19 immediate assessment of civil penalties in the amount of one
20 hundred dollars (\$100) per violation, per day for a maximum of
21 five days, unless the violation is a second or subsequent violation
22 within a 12-month period in which case the civil penalties shall
23 be in the amount of one hundred dollars (\$100) per violation for
24 a maximum of 30 days, and shall be grounds for disciplining the
25 licensee pursuant to Section 1596.885 or Section 1596.886. The
26 department may assess civil penalties for continued violations, as
27 permitted by Sections 1596.99 and 1597.62.

28 (2) Except for persons specified in paragraph (2) of
29 subdivision (b), the licensee shall endeavor to ascertain the
30 previous employment history of persons required to be
31 fingerprinted under this subdivision. If it is determined by the
32 department, on the basis of fingerprints submitted to the
33 Department of Justice, that the person has been convicted of a
34 sex offense against a minor, an offense specified in Section
35 243.4, 273a, 273d, 273g, or 368 of the Penal Code, or a felony,
36 the State Department of Social Services shall notify the licensee
37 to act immediately to terminate the person's employment,
38 remove the person from the child day care facility, or bar the
39 person from entering the child day care facility. The department
40 may subsequently grant an exemption pursuant to subdivision (f).

1 If the conviction was for another crime except a minor traffic
2 violation, the licensee shall, upon notification by the State
3 Department of Social Services, act immediately to either (1)
4 terminate the person's employment, remove the person from the
5 child day care facility, or bar the person from entering the child
6 day care facility; or (2) seek an exemption pursuant to
7 subdivision (f). The department shall determine if the person
8 shall be allowed to remain in the facility until a decision on the
9 exemption is rendered. A licensee's failure to comply with the
10 department's prohibition of employment, contact with clients, or
11 presence in the facility as required by this paragraph shall result
12 in a citation of deficiency and an immediate assessment of civil
13 penalties by the department against the licensee, in the amount of
14 one hundred dollars (\$100) per violation, per day for a maximum
15 of five days, unless the violation is a second or subsequent
16 violation within a 12-month period in which case the civil
17 penalties shall be in the amount of one hundred dollars (\$100)
18 per violation for a maximum of 30 days, and shall be grounds for
19 disciplining the licensee pursuant to Section 1596.885 or
20 1596.886.

21 (3) The department may issue an exemption on its own motion
22 pursuant to subdivision (f) if the person's criminal history
23 indicates that the person is of good character based on the age,
24 seriousness, and frequency of the conviction or convictions. The
25 department, in consultation with interested parties, shall develop
26 regulations to establish the criteria to grant an exemption
27 pursuant to this paragraph.

28 (4) Concurrently with notifying the licensee pursuant to
29 paragraph (3), the department shall notify the affected individual
30 of his or her right to seek an exemption pursuant to subdivision
31 (f). The individual may seek an exemption only if the licensee
32 terminates the person's employment or removes the person from
33 the facility after receiving notice from the department pursuant to
34 paragraph (3).

35 (d) (1) For purposes of this section or any other provision of
36 this chapter, a conviction means a plea or verdict of guilty or a
37 conviction following a plea of nolo contendere. Any action that
38 the department is permitted to take following the establishment
39 of a conviction may be taken when the time for appeal has
40 elapsed, when the judgment of conviction has been affirmed on

1 appeal, or when an order granting probation is made suspending
2 the imposition of sentence, notwithstanding a subsequent order
3 pursuant to Sections 1203.4 and 1203.4a of the Penal Code
4 permitting the person to withdraw his or her plea of guilty and to
5 enter a plea of not guilty, or setting aside the verdict of guilty, or
6 dismissing the accusation, information, or indictment. For
7 purposes of this section or any other provision of this chapter, the
8 record of a conviction, or a copy thereof certified by the clerk of
9 the court or by a judge of the court in which the conviction
10 occurred, shall be conclusive evidence of the conviction. For
11 purposes of this section or any other provision of this chapter, the
12 arrest disposition report certified by the Department of Justice, or
13 documents admissible in a criminal action pursuant to Section
14 969b of the Penal Code, shall be prima facie evidence of
15 conviction, notwithstanding any other provision of law
16 prohibiting the admission of these documents in a civil or
17 administrative action.

18 (2) For purposes of this section or any other provision of this
19 chapter, the department shall consider criminal convictions from
20 another state or federal court as if the criminal offense was
21 committed in this state.

22 (e) The State Department of Social Services may not use a
23 record of arrest to deny, revoke, or terminate any application,
24 license, employment, or residence unless the department
25 investigates the incident and secures evidence, whether or not
26 related to the incident of arrest, that is admissible in an
27 administrative hearing to establish conduct by the person that
28 may pose a risk to the health and safety of any person who is or
29 may become a client. The State Department of Social Services is
30 authorized to obtain any arrest or conviction records or reports
31 from any law enforcement agency as necessary to the
32 performance of its duties to inspect, license, and investigate
33 community care facilities and individuals associated with a
34 community care facility.

35 (f) (1) After review of the record, the director may grant an
36 exemption from disqualification for a license or special permit as
37 specified in paragraphs (1) and (4) of subdivision (a), or for
38 employment, residence, or presence in a child day care facility as
39 specified in paragraphs (3), (4), and (5) of subdivision (c) if the
40 director has substantial and convincing evidence to support a

1 reasonable belief that the applicant and the person convicted of
2 the crime, if other than the applicant, are of good character so as
3 to justify issuance of the license or special permit or granting an
4 exemption for purposes of subdivision (c). However, an
5 exemption may not be granted pursuant to this subdivision if the
6 conviction was for any of the following offenses:

7 (A) An offense specified in Section 220, 243.4, or 264.1,
8 subdivision (a) of Section 273a or, prior to January 1, 1994,
9 paragraph (1) of Section 273a, Section 273d, 288, or 289,
10 subdivision (a) of Section 290, or Section 368 of the Penal Code,
11 or was a conviction of another crime against an individual
12 specified in subdivision (c) of Section 667.5 of the Penal Code.

13 (B) A felony offense specified in Section 729 of the Business
14 and Professions Code or Section 206 or 215, subdivision (a) of
15 Section 347, subdivision (b) of Section 417, or subdivision (a) or
16 (b) of Section 451 of the Penal Code.

17 (2) The department may not prohibit a person from being
18 employed or having contact with clients in a facility on the basis
19 of a denied criminal record exemption request or arrest
20 information unless the department complies with the
21 requirements of Section 1596.8897. *Notwithstanding*
22 *subparagraph (B) of paragraph (1) of, and subparagraph (B) of*
23 *paragraph (2) of, subdivision (h) of Section 1596.8897, if a*
24 *request for an exemption has been denied, or an exemption has*
25 *been revoked, the individual shall be prohibited for a period of*
26 *two years from seeking reinstatement or an exemption, unless the*
27 *individual has been convicted of a crime for which no exemption*
28 *can be granted. If a request for an exemption has been denied*
29 *based on conviction for a crime for which no exemption may be*
30 *granted, the individual shall be excluded for the remainder of his*
31 *or her life.*

32 (g) Upon request of the licensee, who shall enclose a
33 self-addressed stamped postcard for this purpose, the Department
34 of Justice shall verify receipt of the fingerprints.

35 (h) (1) For the purposes of compliance with this section, the
36 department may permit an individual to transfer a current
37 criminal record clearance, as defined in subdivision (a), from one
38 facility to another, as long as the criminal record clearance has
39 been processed through a state licensing district office, and is
40 being transferred to another facility licensed by a state licensing

1 district office. The request shall be in writing to the department,
2 and shall include a copy of the person's driver's license or valid
3 identification card issued by the Department of Motor Vehicles,
4 or a valid photo identification issued by another state or the
5 United States government if the person is not a California
6 resident. Upon request of the licensee, who shall enclose a
7 self-addressed stamped envelope for this purpose, the department
8 shall verify whether the individual has a clearance that can be
9 transferred.

10 (2) The State Department of Social Services shall hold
11 criminal record clearances in its active files for a minimum of
12 two years after an employee is no longer employed at a licensed
13 facility in order for the criminal record clearances to be
14 transferred.

15 (3) The following shall apply to a criminal record clearance or
16 exemption from the department or a county office with
17 department delegated licensing authority:

18 (A) A county office with department delegated licensing
19 authority may accept a clearance or exemption from the
20 department.

21 (B) The department may accept a clearance or exemption from
22 any county office with department delegated licensing authority.

23 (C) A county office with department delegated licensing
24 authority may accept a clearance or exemption from any other
25 county office with department delegated licensing authority.

26 (4) With respect to notifications issued by the Department of
27 Justice pursuant to Section 11105.2 of the Penal Code concerning
28 an individual whose criminal record clearance was originally
29 processed by the department or a county office with department
30 delegated licensing authority, all of the following shall apply:

31 (A) The Department of Justice shall process a request from the
32 department or a county office with department delegated
33 licensing authority to receive the notice, only if all of the
34 following conditions are met:

35 (i) The request shall be submitted to the Department of Justice
36 by the agency to be substituted to receive the notification.

37 (ii) The request shall be for the same applicant type as the type
38 for which the original clearance was obtained.

1 (iii) The request shall contain all prescribed data elements and
2 format protocols pursuant to a written agreement between the
3 department and the Department of Justice.

4 (B) (i) On or before January 7, 2005, the department shall
5 notify the Department of Justice of all county offices that have
6 department delegated licensing authority.

7 (ii) The department shall notify the Department of Justice
8 within 15 calendar days of the date on which a new county office
9 receives department delegated licensing authority or a county's
10 delegated licensing authority is rescinded.

11 (C) The Department of Justice shall charge the department or
12 a county office with department delegated licensing authority a
13 fee for each time a request to substitute the recipient agency is
14 received for purposes of this paragraph. This fee shall not exceed
15 the cost of providing the service.

16 (i) Amendments to this section made in the 1998 calendar year
17 shall be implemented commencing 60 days after the effective
18 date of the act amending this section in the 1998 calendar year,
19 except those provisions for the submission of fingerprints for
20 searching the records of the Federal Bureau of Investigation,
21 which shall be implemented commencing January 1, 1999.

22 *SEC. 12. Section 1728.1 of the Health and Safety Code is*
23 *amended to read:*

24 1728.1. (a) To qualify for a home health agency license, the
25 following requirements shall be met:

26 (1) Every applicant shall satisfy the following conditions:

27 (A) Be of good moral character. If the applicant is a firm,
28 association, organization, partnership, business trust, corporation,
29 or company, all principal managing members thereof, and the
30 person in charge of the agency for which application for license
31 is made, shall satisfy this requirement. If the applicant is a
32 political subdivision of the state or other governmental agency,
33 the person in charge of the agency for which application for
34 license is made, shall satisfy this requirement.

35 (B) Possess and demonstrate the ability to comply with this
36 chapter and the rules and regulations adopted under this chapter
37 by the state department.

38 (C) File his or her application pursuant to and in full
39 compliance with this chapter.

(2) (A) The following persons shall submit to the State Department of Health Services an application, ~~including fingerprints, and shall submit electronic fingerprint images to the Department of Justice~~ for the furnishing of the person's criminal record to the state department, at the person's expense as provided in subdivision (b), for the purpose of a criminal record review:

~~(A)~~

(i) The owner or owners of a private agency if the owners are individuals.

~~(B)~~

(ii) If the owner of a private agency is a corporation, partnership, or association, any person having a 10 percent or greater interest in that corporation, partnership, or association.

~~(C)~~

(iii) The administrator of a home health agency.

(B) A criminal record clearance shall be complete when the department has obtained the person's criminal record information from the Department of Justice and has determined that the person is not disqualified from engaging in the activity for which clearance is required. If any of these persons provide services to patients, the criminal record clearance shall be completed prior to patient contact.

(b) The persons specified in paragraph (2) of subdivision (a) shall be responsible for any costs associated with ~~rolling~~ transmitting the *electronic fingerprint cards images*. The fee to cover the processing costs of the Department of Justice, not including the costs associated with rolling the fingerprint cards, shall not exceed thirty-two dollars (\$32) per card.

(c) If the criminal record review conducted pursuant to paragraph (2) of subdivision (a) discloses a conviction for a felony or any crime that evidences an unfitness to provide home health services, the application for a license shall be denied or the person shall be prohibited from providing service in the home health agency applying for a license. This subdivision shall not apply to deny a license or prohibit the provision of service if the person presents evidence satisfactory to the state department that the person has been rehabilitated and presently is of such good character as to justify the issuance of the license or the provision of service in the home health agency.

1 (d) A person subject to a criminal clearance under this section
2 that has been disqualified from engaging in the activity for which
3 clearance is required shall not reapply for criminal clearance
4 licensure until two years after notification of denial of the
5 criminal clearance.

6 SEC. 13. Section 1736.1 of the Health and Safety Code is
7 amended to read:

8 1736.1. (a) An applicant for certification as a certified home
9 health aide shall comply with each of the following requirements:

10 (1) Have successfully completed a training program approved
11 by the department pursuant to applicable federal and state
12 regulations.

13 (2) Obtain a criminal record clearance pursuant to Section
14 1736.6.

15 ~~(b)~~

16 (3) Shall not have had an application for certification denied
17 or a certificate revoked pursuant to Section 1736.5 or 1337.9 in
18 the past two years.

19 (4) Shall not have had a criminal record clearance denied
20 within the preceding two years.

21 (b) If the department determines that the person had
22 previously applied for a certificate under this article, and the
23 application was denied pursuant to Section 1736.5 or 1337.9
24 within the last two years, the department shall reject the
25 application and exclude the person from any facility licensed by
26 the department as follows:

27 (1) In cases where the applicant petitioned for a hearing, the
28 department shall reject the application until two years have
29 elapsed from the effective date of the decision and order of the
30 department upholding the denial.

31 (2) In cases where the applicant did not petition for a hearing,
32 the department shall reject the application until two years have
33 elapsed from the date of the notification of the denial.

34 (3) In cases where an immediate action was taken pursuant to
35 subdivision (h) of Section 1736.5 or subdivision (i) of Section
36 1337.9 and the applicant petitioned for a hearing, the department
37 shall reject the application until two years have elapsed from the
38 date of the notification of the revocation.

39 (c) Any person who violates this article is guilty of a
40 misdemeanor and, upon a conviction thereof, shall be punished

1 by imprisonment in the county jail for not more than 180 days, or
2 by a fine of not less than twenty dollars (\$20) nor more than one
3 thousand dollars (\$1,000), or by both fine and imprisonment.

4 *SEC. 14. Section 1736.2 of the Health and Safety Code is*
5 *amended to read:*

6 1736.2. (a) Certificates issued for certified home health aides
7 shall be renewed every two years and renewal shall be
8 conditioned on the certificate holder obtaining a criminal record
9 clearance pursuant to Section 1736.6.

10 (b) Certificates issued to certified home health aides shall
11 expire on the certificate holder's birthday. If the certificate is
12 renewed more than 30 days after its expiration, the certificate
13 holder, as a condition precedent to renewal, shall also pay the
14 delinquency fee prescribed by this article.

15 (c) To renew an unexpired certificate, the certificate holder
16 shall, on or before the certificate expiration date, apply for
17 renewal on a form provided by the state department and pay the
18 renewal fee prescribed in Section 1736.3.

19 (d) The state department shall give written notice to a
20 certificate holder 90 days in advance of the renewal date and 90
21 days in advance of the expiration of the fourth year that a
22 renewal fee has not been paid, and shall give written notice
23 informing the certificate holder in general terms of the provisions
24 governing certificate renewal for certified home health aides.
25 Nonreceipt of the renewal notice does not relieve the certificate
26 holder of the obligation to make a timely renewal. Failure to
27 make a timely renewal shall result in expiration of the certificate.

28 (e) Except as otherwise provided in this article, an expired
29 certificate may be renewed at any time within four years after its
30 expiration on the filing of an application for renewal on a form
31 prescribed by the state department, and payment of the renewal
32 fee in effect on the date the application is filed.

33 Renewal under this article shall be effective on the date on
34 which the application is filed, on the date when the renewal fee is
35 paid, or on the date on which the delinquency fee is paid,
36 whichever occurs last. If renewed, the certificate shall continue in
37 effect until the date provided for in this section, when it shall
38 expire if it is not again renewed.

39 (f) If a certified home health aide applies for renewal more
40 than 30 days after expiration but within four years after the

1 expiration, and demonstrates in writing to the state department's
2 satisfaction why the renewal application was late, then the state
3 department shall issue a renewal, upon payment of the renewal
4 fee. If the certified home health aide demonstrates in writing to
5 the state department's satisfaction why he or she cannot pay the
6 delinquency fee, then the state department on a case-by-case
7 basis shall consider waiving the delinquency fee. A suspended
8 certificate is subject to expiration and shall be renewed as
9 provided in this article, but this renewal does not entitle the
10 certificate holder, while the certificate remains suspended, and
11 until it is reinstated, to engage in the certified activity, or in any
12 other activity or conduct in violation of the order or judgment by
13 which the certificate was suspended.

14 (g) A revoked certificate is subject to expiration as provided in
15 this section, but it cannot be renewed. If reinstatement of the
16 certificate is approved by the state department, the certificate
17 holder, as a condition precedent to reinstatement, shall pay a
18 reinstatement fee in an amount equal to the renewal fee in effect
19 on the date the application for reinstatement is filed, plus the
20 delinquency fee, if any, accrued at the time of its revocation. *If*
21 *the prior certificate was revoked within the preceding two years,*
22 *the prior certificate holder may not file an initial application*
23 *until two years have elapsed from the date of the revocation*
24 *pursuant to subdivision (b) of Section 1736.1.*

25 (h) A certificate that is not renewed within four years after its
26 expiration cannot be renewed, restored, reissued, or reinstated
27 except upon completion of a certification training program unless
28 deemed otherwise by the state department if all of the following
29 conditions are met:

30 (1) No fact, circumstance, or condition exists that, if the
31 certificate were issued, would justify its revocation or
32 suspension.

33 (2) The person pays the application fee provided for by
34 subdivision (a) of Section 1736.3.

35 (3) The person takes and passes any examination that may be
36 required of an applicant for a new certificate at that time, that
37 shall be given by an approved provider of a certification training
38 program.

39 (i) Certificate holders shall notify the state department within
40 60 days of any change of address. Any notice sent by the

1 department shall be effective if mailed to the current address
2 filed with the department.

3 (j) Certificate holders that have been certified as both nurse
4 assistants pursuant to Article 9 (commencing with Section 1337)
5 of Chapter 2 of Division 2 and home health aides pursuant to this
6 chapter shall renew their certificates at the same time on one
7 application.

8 *SEC. 15. Section 1736.6 of the Health and Safety Code is*
9 *amended to read:*

10 1736.6. (a) ~~(1)~~—A criminal record clearance shall be
11 conducted for all home health aides by the *electronic* submission
12 of fingerprint cards to the ~~state~~ department for processing at the
13 Department of Justice. This criminal record clearance shall be
14 completed prior to issuing or renewing a certificate, *and prior to*
15 *direct contact with residents. A criminal record shall be*
16 *completed when the department has obtained the person's*
17 *criminal record information from the Department of Justice and*
18 *has determined that the person is not disqualified from engaging*
19 *in the activity for which clearance is required.* Applicants shall
20 be responsible for any costs associated with ~~rolling~~ *transmitting*
21 the fingerprint ~~cards~~ *images*. The fee to cover the processing
22 costs of the Department of Justice, not including the costs
23 associated with ~~rolling~~ *transmitting* the fingerprint ~~cards~~ *images*,
24 shall not exceed thirty-two dollars (\$32) per ~~card~~ *submission*.

25 ~~(2)~~ ~~(A)~~—

26 (b) Upon enrollment in a training program for home health
27 aide certification, and prior to direct contact with residents, a
28 candidate for training shall submit a training and examination
29 application ~~and the fingerprint cards~~ to the ~~state~~ department *and*
30 *submit electronic fingerprint images* to receive a criminal record
31 review through the Department of Justice. *This criminal record*
32 *clearance shall be completed prior to direct contact with*
33 *residents.* Submission of the fingerprints to the Federal Bureau of
34 Investigation shall be at the discretion of the state department.

35 ~~(B)~~

36 (c) New home health aide applicants who are unemployed and
37 unable to pay the fee charged by the Department of Justice
38 pursuant to paragraph (1) of subdivision (a) due to financial
39 hardship may request a waiver for a period not to exceed six
40 months. The request for waiver shall be made in writing at the

1 time the fingerprint card is submitted for processing. The
2 applicant shall agree to pay the fee within six months of
3 employment. The failure to pay the fee within the six-month
4 period shall result in the inactivation of the applicant's certificate
5 until the fee is paid in full.

6 ~~(b)~~

7 (d) Upon receipt of the fingerprints, the Department of Justice
8 shall notify the state department of the criminal record
9 information, as provided for in this subdivision. If no criminal
10 record information has been recorded, the Department of Justice
11 shall provide the state department with a statement of that fact. If
12 the fingerprints are illegible, the Department of Justice shall,
13 within 15 calendar days from receipt of the fingerprints, notify
14 the state department of that fact.

15 ~~(e)~~

16 (e) The department shall respond to the applicant and
17 employer within 30 days from the date of receipt of the
18 fingerprint cards.

19 ~~(d)~~

20 (f) A criminal record clearance, consistent with this section
21 shall be implemented for home health aide applicants beginning
22 July 1, 1998, and phased in for all certified home health aides by
23 June 30, 2000.

24 ~~(e) The use of fingerprint live scan technology implemented~~
25 ~~by the Department of Justice by the year 1999 shall be used by~~
26 ~~the Department of Justice to generate timely and accurate~~
27 ~~positive fingerprint identification prior to home health aide~~
28 ~~certification.~~

29 ~~(f)~~

30 (g) The department shall develop procedures to ensure that
31 any licensee, direct care staff, or certificate holder for whom a
32 criminal record has been obtained pursuant to this section or
33 Section 1265.6 or 1338.5 shall not be required to obtain multiple
34 criminal record clearances.

35 ~~(g) If the department receives a fingerprint card from a~~
36 ~~certified home health aide 60 days prior to the expiration of the~~
37 ~~certified health aide's certification and the department has~~
38 ~~received no response from the Department of Justice, or if the~~
39 ~~department is experiencing a delay in processing the renewal of~~
40 ~~the certified home health aide's certification at the time of the~~

1 ~~expiration of the certified home health aide's certification, the~~
2 ~~department may extend the expiration of the certified home~~
3 ~~health aide's certification for 60 days. This provision shall expire~~
4 ~~August 1, 2001.~~

5 *SEC. 16. Section 1743.9 of the Health and Safety Code is*
6 *amended to read:*

7 1743.9. (a) To qualify for a private duty nursing agency
8 license, the following requirements shall be met:

9 (1) Every applicant shall satisfy the following conditions:

10 (A) Be of good moral character. If the applicant is a firm,
11 association, organization, partnership, business trust, corporation,
12 or company, all principal managing members thereof, and the
13 person in charge of the agency for which application for a license
14 is made, shall satisfy this requirement. If the applicant is a
15 political subdivision of the state or other governmental agency,
16 the person in charge of the agency for which application for a
17 license is made shall satisfy this requirement.

18 (B) Possess and demonstrate the ability to comply with this
19 chapter and the rules and regulations adopted under this chapter
20 by the department.

21 (C) File his or her application pursuant to and in full
22 compliance with this chapter.

23 (2) (A) The following persons shall submit to the department
24 an application, ~~including fingerprints and shall submit fingerprint~~
25 *images to the Department of Justice*, for the furnishing of the
26 person's criminal record to the department, at the person's
27 expense as provided in subdivision (b), for the purpose of a
28 criminal record review:

29 ~~(A)~~

30 (i) The owner or owners of a private agency if the owners are
31 individuals.

32 ~~(B)~~

33 (ii) If the owner of a private agency is a corporation,
34 partnership, or association, any person having a 10 percent or
35 greater interest in that corporation, partnership, or association.

36 ~~(C)~~

37 (iii) The administrator of a private duty nursing agency.

38 (3) *A criminal record clearance shall be complete when the*
39 *department has obtained from the Department of Justice the*
40 *person's criminal record and has determined that the person is*

1 *not disqualified from engaging in the activity for which clearance*
2 *is required.*

3 (b) The persons specified in paragraph (2) of subdivision (a)
4 shall be responsible for any costs associated with ~~rolling~~
5 *transmitting the fingerprint-cards images*. The fee to cover the
6 processing costs of the Department of Justice, not including the
7 costs associated with ~~rolling~~ *transmitting the electronic*
8 *fingerprint-cards images*, shall not exceed thirty-two dollars (\$32)
9 *per-card submission*.

10 (c) If the criminal record review conducted pursuant to
11 paragraph (2) of subdivision (a) discloses a conviction for a
12 felony or any crime that evidences an unfitness to provide private
13 duty nursing services, the application for a license shall be
14 denied, or the person shall be prohibited from providing service
15 in the private duty nursing agency applying for a license. This
16 subdivision shall not apply to deny a license or prohibit the
17 provision of service if the person presents evidence satisfactory
18 to the department that the person has been rehabilitated and
19 presently is of that good character that justifies the issuance of
20 the license or the provision of service in the private duty nursing
21 agency.

22 (d) *The applicant shall not have had an application for*
23 *licensure or renewal denied or revoked pursuant to Section*
24 *1743.25 in the preceding two years, nor had a criminal*
25 *clearance denied by the department within the preceding two*
26 *years.*

27 *SEC. 17. No reimbursement is required by this act pursuant*
28 *to Section 6 of Article XIII B of the California Constitution*
29 *because the only costs that may be incurred by a local agency or*
30 *school district will be incurred because this act creates a new*
31 *crime or infraction, eliminates a crime or infraction, or changes*
32 *the penalty for a crime or infraction, within the meaning of*
33 *Section 17556 of the Government Code, or changes the definition*
34 *of a crime within the meaning of Section 6 of Article XIII B of the*
35 *California Constitution.*

36 ~~SECTION 1. The Legislature finds and declares all of the~~
37 ~~following:~~

38 ~~(a) Departments within the California Health and Human~~
39 ~~Services Agency license almost half a million facilities and~~
40 ~~professionals, including child care providers, foster care homes,~~

1 nursing homes, alcohol and drug treatment providers, hospitals,
2 mental health facilities, laboratory technicians, certified nurse
3 assistants, X-ray technologists, and paramedics.

4 (b) Each licensing and certification program within the agency
5 is critical to protecting the health and safety of millions of
6 Californians.

7 (c) Many licensing programs within the agency currently
8 perform criminal background checks, as a key strategy to protect
9 the health and safety of residents and other consumers.

10 (d) It is appropriate public policy to enhance public safety
11 protections by preventing violent criminals from working with
12 the most vulnerable populations and improving criminal
13 background check requirements and investigations.

14 SEC. 2. It is the intent of the Legislature to enact legislation
15 to make necessary statutory changes to do all of the following:

16 (a) Adopt a consistent set of core crimes that would constitute
17 a lifetime ban for departments and programs providing direct
18 client or patient services.

19 (b) Adopt a consistent set of mid-level serious crimes that
20 would be nonexemptible for five to 10 years for departments and
21 programs providing direct client or patient services.

22 (c) Require the completion of state criminal background
23 clearances prior to client contact to increase client protection,
24 allowing client contact to occur prior to the criminal background
25 clearance only if the staff person is a new hire or in a training
26 program, and under 100 percent supervision when in contact with
27 clients or patients.

28 (d) Require individuals who have been denied licensure or
29 employment due to a failed criminal background clearance to
30 wait a minimum of two years before reapplying, or longer if the
31 crime included a mandatory time period exclusion, shorter if
32 mandatory time period exclusion ends prior to the end of a two
33 year time period, with appropriate appeal rights provided.